

No. 16418

VOL 3110

United States
Court of Appeals
for the Ninth Circuit

REX L. NEELY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

In Two Volumes

VOLUME I.

(Pages 1 to 240, Incl.)

Appeal from the United States District Court
for the District of Arizona

FILED

JUL 17 1959

PAUL P. O'BRIEN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the United States District Court
For the District of Arizona

No. C-14746 Phx.

UNITED STATES OF AMERICA, Plaintiff,

vs.

REX L. NEELY and JOE L. SHORT,
Defendants.

INDICTMENT

Violations: 18 U.S.C. 371 (Conspiracy); 18 U.S.C.
1001 (False Statements); 18 U.S.C. 2073 (False
Entries); 18 U.S.C. 201 and 202 (Bribery).

The Grand Jury Charges:

Count I

On or about April 5, 1954, within the District of Arizona, the defendant Rex L. Neely, well knowing Joe L. Short to be an employee of the Pinal County Agricultural Stabilization and Conservation Committee, an agency of the United States, and in such capacity charged with the duty of proper administration of the cotton acreage allotment and marketing quota program of the United States as the defendant well knew, did wilfully and unlawfully tender to the said Joe L. Short a check in the amount of \$1,620.00, dated April 5, 1954, drawn on the Valley National Bank, Mesa, Arizona, signed by the defendant as drawer, and payable to the

order of Joe Short, with intent to influence the said Joe L. Short, to act in his aforesaid official capacity in committing and allowing the commission of a fraud against the United States, to wit: the procuring of a cotton allotment for the defendant in excess of that to which the defendant was lawfully entitled under the cotton acreage allotment and marketing quota program of the United States.

(18 U.S.C. 201.)

Count II

On or about April 5, 1954, within the District of Arizona, the defendant Joe L. Short, being then and there an employee of the Pinal County Agricultural Stabilization and Conservation Committee, an agency of the United States, and charged with the duty of administering the cotton acreage allotment and marketing quota program of the United States, did, with intent to have his actions influenced in a matter before him in his official capacity, to wit: the procuring of an additional cotton acreage allotment for Rex L. Neely, wilfully and unlawfully accept from Rex L. Neely a check in the amount of \$1,620.00, dated April 5, 1954, drawn on the Valley National Bank, Mesa, Arizona, signed by the said Neely as drawer, and payable to the order of Joe Short.

(18 U.S.C. 202.)

Count III

On or about November 22, 1954, within the District of Arizona, the defendant Rex L. Neely, well

knowing Joe L. Short to be an employee of the Pinal County Agricultural Stabilization and Conservation Committee, an agency of the United States, and in such capacity charged with the duty of proper administration of the cotton acreage allotment and marketing quota program of the United States as the defendant well knew, did wilfully and unlawfully tender to the said Joe L. Short a check in the amount of \$1,410.00, dated November 22, 1954, drawn on the Valley National Bank, Mesa, Arizona, signed by the defendant as drawer, and payable to the order of Joe L. Short, with intent to influence the said Joe L. Short, to act in his afore-said official capacity in committing and allowing the commission of a fraud against the United States, to wit: the procuring of a cotton allotment for said Neely in excess of that to which the defendant was lawfully entitled under the cotton acreage allotment and marketing quota program of the United States.

(18 U.S.C. 201.)

Count IV

On or about November 22, 1954, within the District of Arizona, the defendant Joe L. Short, being then and there an employee of the Pinal County Agricultural Stabilization and Conservation Committee, an agency of the United States, and charged with the duty of administering the cotton acreage allotment and marketing quota program of the United States, did, with intent to have his actions influenced in a matter before him in his official

capacity, to wit: the procuring of an additional cotton acreage allotment for Rex L. Neely, wilfully and unlawfully accept from Rex L. Neely a check in the amount of \$1,410.00, dated November 22, 1954, drawn on the Valley National Bank, Mesa, Arizona, signed by the defendant as drawer, and payable to the order of Joe L. Short.

(18 U.S.C. 202.)

Count V.

On or about December 9, 1955, within the District of Arizona, the defendant Rex L. Neely, well knowing Joe L. Short to be an employee of the Pinal County Agricultural Stabilization and Conservation Committee, an agency of the United States, and in such capacity charged with the duty of proper administration of the cotton acreage allotment and marketing quota program of the United States as the defendant well knew, did wilfully and unlawfully tender to the said Joe L. Short a check in the amount of \$1,750.00, dated December 9, 1955, drawn on the Valley National Bank, Mesa, Arizona, signed by the defendant as drawer, and payable to the order of Joe Short, with intent to influence the said Joe L. Short, to act in his aforesaid official capacity in committing and allowing the commission of a fraud against the United States, to wit: the procuring of a cotton allotment for the defendant in excess of that to which the defendant was lawfully entitled under the cotton acreage allotment and marketing quota program of the United States.

(18 U.S.C. 201.)

Count VI

On or about December 9, 1955, within the District of Arizona, the defendant Joe L. Short, being then and there an employee of the Pinal County Agricultural Stabilization and Conservation Committee, an agency of the United States, and charged with the duty of administering the cotton acreage allotment and marketing quota program of the United States, did, with intent to have his actions influenced in a matter before him in his official capacity, to wit: the procuring of an additional cotton acreage allotment for Rex L. Neely, wilfully and unlawfully accept from Rex L. Neely a check in the amount of \$1,750.00, dated December 9, 1955, drawn on the Valley National Bank, Mesa, Arizona, signed by said Neely as drawer, and payable to the order of Joe Short.

(18 U.S.C. 202.)

Count VII

1. On or about the 19th day of March, 1954, Joe L. Short, being then and there an employee of the Pinal County Agricultural Stabilization and Conservation Committee, an agency of the United States, and being charged with the duty of keeping accounts and records of said agency, did within the District of Arizona, unlawfully, knowingly and feloniously, with intent to deceive, mislead, injure and defraud the United States and persons to the grand jury unknown, make and cause to be made a false and fictitious entry on the official listing sheets of the Pinal County Agricultural Stabilization and

Conservation Committee Office for the 1954 cotton crop year; a record relating to and connected with his duties, by indicating thereon 400.8 acres of cotton allotment acreage apportioned to Farm 647, well knowing said entry to be false.

2. The defendant Rex L. Neely did unlawfully aid, abet and induce the defendant Joe L. Short in the commission of the acts charged in paragraph One of this count.

(18 U.S.C. 2073.)

Count VIII

1. On or about the 19th day of March, 1954, Joe L. Short, being then and there an employee of the Pinal County Agricultural Stabilization and Conservation Committee, an agency of the United States, and being charged with the duty of keeping accounts and records of said agency, did within the District of Arizona, unlawfully, knowingly and feloniously, with intent to deceive, mislead, injure and defraud the United States and persons to the grand jury unknown, make and cause to be made a false and fictitious entry on the Release and Reapportionment Supplement sheets of the Pinal County Agricultural Stabilization and Conservation Committee office for the 1954 cotton crop year, a record relating to and connected with his duties, by indicating thereon 73.4 acres of cotton allotment acreage released by Farm 595, well knowing said entry to be false.

2. The defendant Rex L. Neely did unlawfully aid, abet and induce the defendant Joe L. Short in

the commission of the acts charged in paragraph One of this count.

(18 U.S.C. 2073.)

Count IX

1. On or about the 19th day of March, 1954, Joe L. Short, being then and there an employee of the Pinal County Agricultural Stabilization and Conservation Committee, an agency of the United States, and being charged with the duty of keeping accounts and records of said agency, did within the District of Arizona, unlawfully, knowingly and feloniously, with intent to deceive, mislead, injure and defraud the United States and persons to the grand jury unknown, make and cause to be made a false and fictitious entry on a revised Notice of Allotment for Farm 647 of the Pinal County Agricultural Stabilization and Conservation Committee Office for the 1954 cotton crop year, a record relating to and connected with his duties, by indicating thereon 400.8 acres of cotton allotment acreage due to released and reapportioned unused farm allotment, well knowing said entry to be false.

2. The defendant Rex L. Neely did unlawfully aid, abet and induce the defendant Joe L. Short in the commission of the acts charged in paragraph One of this count.

(18 U.S.C. 2073.)

Count X

1. On or about the 18th day of August, 1955, Joe L. Short, being then and there an employee of the

Pinal County Agricultural Stabilization and Conservation Committee, an agency of the United States, and being charged with the duty of keeping accounts and records of said agency, did within the District of Arizona, unlawfully, knowingly and feloniously, with intent to deceive, mislead, injure and defraud the United States and persons to the grand jury unknown, make and cause to be made a false and fictitious entry as to Farm 647, short staple cotton, on Form 578 of the Pinal County Agricultural Stabilization and Conservation Committee Office for the 1955 cotton crop year, a record relating to and connected with his duties, by indicating thereon 120.4 acres of cotton destroyed on said Farm 647, well knowing said entry to be false.

2. The defendant Rex L. Neely did unlawfully aid, abet and induce the defendant Joe L. Short in the commission of the acts charged in paragraph One of this count.

(18 U.S.C. 2073.)

Count XI

1. On or about the 18th day of August, 1955, Joe L. Short, being then and there an employee of the Pinal County Agricultural Stabilization and Conservation Committee, an agency of the United States, and being charged with the duty of keeping accounts and records of said agency, did within the District of Arizona, unlawfully, knowingly and feloniously, with intent to deceive, mislead, injure and defraud the United States and persons to the grand jury unknown, make and cause to be made a false

and fictitious entry as to Farm 647, long staple cotton, on Form 578 of the Pinal County Agricultural Stabilization and Conservation Committee Office for the 1955 cotton crop year, a record relating to and connected with his duties, by indicating thereon 1.8 acres of cotton destroyed on said Farm 647, well knowing said entry to be false.

2. The defendant Rex L. Neely did unlawfully aid, abet and induce the defendant Joe L. Short in the commission of the acts charged in paragraph One of this count.

(18 U.S.C. 2073.)

Count XII

1. Commencing on or about the 15th day of September, 1953, and continuing thereafter to on or about the 28th day of December, 1956, the defendants, Rex L. Neely, hereinafter referred to as Neely, and Joe L. Short, hereinafter referred to as Short, did within the District of Arizona unlawfully, wilfully and knowingly conspire together to defraud the United States in the exercise of its governmental functions of administering the cotton acreage allotment and marketing quota program and other agricultural programs free from bribery, improper influence, dishonesty, unlawful impairment, fraud and corruption, and in its right and interest in the conscientious, honest and faithful service, judgment, determination and action of the defendant Short, as a duly appointed employee of the Pinal County Agricultural Stabilization and Conservation Committee, an agency of the United

States, free from bribery, corruption, improper influence, dishonesty, bias, hope of unlawful reward and fraud.

2. During the existence of the conspiracy and at all times mentioned herein, the defendant Neely was a farmer engaged in the occupation of raising, among other things, crops of cotton.

3. During the existence of the conspiracy and at all times mentioned herein the defendant Short was employed by the Department of Agriculture in the Pinal County Agricultural Stabilization and Conservation Committee Office as office manager.

4. It was a part of the conspiracy that the defendant Short should contrive to secure for the defendant Neely a cotton allotment from the Agricultural Stabilization and Conservation Committee in Pinal County far in excess of the allotment to which Neely was lawfully entitled under the cotton support program, thereby enabling the defendant Neely to market the excess cotton without penalty.

5. It was a further part of the conspiracy that Short should share in the illegal benefits accruing to Neely by receiving payments in money from Neely on a per acre basis.

6. It was a further part of the conspiracy that Short should alter, change, and falsify the records of the Agricultural Stabilization and Conservation Committee Office to provide additional cotton allotment acreage for Neely and to prevent the discovery or disclosure of the illegal activity.

7. It was a further part of the conspiracy that Neely should apply for and Short should process

requests for Agriculture Conservation Program payments from Department of Agriculture to which Neely was not entitled; and that such payments should be substantiated by the presentation of false documents and fraudulent misrepresentations to said department by Short.

Overt Acts

8. For the purpose of carrying out the said conspiracy and to effect the objectives and purposes thereof, the defendants did and committed the following overt acts:

(1) On or about March 19, 1954, Short altered the amount of Neely's 1954 acreage cotton allotment on the official listing sheet of the Pinal County Agricultural Stabilization and Conservation Committee Office by lining out the figures 319.8 and inserting above it the figures 400.8.

(2) On or about March 30, 1954, Short signed the fictitious name, W. R. Burns, to a lease, by which 160 acres of land having the same legal description as Farm 595 was leased to Neely.

(3) On or about April 5, 1954, Neely issued a check payable to Short for \$1,620.

(4) On or about November 22, 1954, Neely issued a check payable to Short for \$1,410.

(5) On or about August 18, 1955, Neely signed his Form 578, an official form of the aforesaid office, which showed 426.5 acres of planted short staple cotton and none destroyed, and at the same time accepted his marketing card and signed it, on which

marketing card was shown that his allotment was 306.1 acres and that his planted acreage was 306.1.

(6) On or about December 9, 1955, Neely issued to Short a check for \$1,750.

(7) On or about October 3, 1956, Neely signed his Form 578, an official form of the aforesaid office for short staple cotton, showing his planted acreage as 477.7 and at the same time accepted his short staple marketing card which showed his planted acreage as 306.7.

(8) On or about December 1, 1956, Short instructed H. L. Mathis to make up a new Notice of Allotment showing that Neely had an acreage allotment of 367.7 acres.

(9) On or about August or September, 1954, Neely requested Agriculture Conservation Program assistance for a ditch lining practice indicating that construction of the ditch would be commenced by Neely in September.

(10) On or about September 27, 1954, Neely made application for payment in the amount of \$1,500.

(18 U.S.C. 371.)

A True Bill.

/s/ ROGER S. HOGEL,
Foreman.

/s/ JACK D. H. HAYS,
United States Attorney.

[Endorsed]: Filed October 23, 1957.

In the United States District Court
For the District of Arizona

October 1957 Term

At Phoenix

Minute Entry of
Monday, October 28, 1957
(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, presiding.

[Title of Cause.]

This case is called for arraignment this day. The defendant Rex L. Neely is present in person with his counsel, Louis B. Whitney and Paul LaPrade. The defendant Joe L. Short is present in person with counsel, Preston Sult, Esq., who appears on behalf of Wm. A. Stanfield, Esq., counsel for said defendant. The defendants are arraigned. The defendants waive reading of the Indictment and a copy thereof is given to each of the defendants. On motion of counsel for the defendants,

It Is Ordered that the defendants be allowed two weeks to file motions attacking the indictment, and that this case be continued for plea until after ruling on motions and that the defendants be allowed to remain on their own recognisance.

[Title of District Court and Cause.]

MOTION TO DISMISS

The defendant Rex L. Neely moves to dismiss the Indictment and each and every Count thereof on the ground that each Count is fatally defective in that it does not state facts sufficient to constitute an offense against the United States.

WHITNEY & LaPRADE,
/s/ By LOUIS B. WHITNEY.

Notice of Motion

To United States of America, Plaintiff; Jack D. H. Hays, Esquire, United States Attorney, Plaintiff's Attorney:

Please Take Notice that upon the Indictment herein in the above entitled and numbered cause, and upon the points and authorities herewith served upon you, the undersigned will move this Court at the next regular Law and Motion Calendar of this Court, in the United States Court House, Phoenix, Arizona, at 10:00 o'clock A.M. in the forenoon of November 18, 1957, or as soon thereafter as counsel can be heard, for an order dismissing the indictment and each Count thereof.

Dated this 5th day of November, 1957.

WHITNEY & LaPRADE,
/s/ By LOUIS B. WHITNEY.

Acknowledgment of Service Attached.

[Endorsed]: Filed November 5, 1957.

In the United States District Court

For the District of Arizona

October 1957 Term

At Phoenix

Minute Entry of

Wednesday, November 27, 1957

(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, presiding.

[Title of Cause.]

It Is Ordered that Motion to Dismiss of defend-
ant, Rex L. Neely, is denied.

In the United States District Court

For the District of Arizona

October 1957 Term

At Phoenix

Minute Entry of

Monday, December 9, 1957

(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, presiding.

[Title of Cause.]

This case is called for plea this day as to defend-
ant Rex L. Neely and trial setting as to defendants,
Rex L. Neely and Joe L. Short. The defendant, Rex
L. Neely, is present in person with his counsel,
Louis B. Whitney, Esq. Said defendant waives
reading of the indictment and pleads not guilty,
which plea is entered.

It Is Ordered that this case is set for trial Wed-
nesday, September 10, 1958, at ten o'clock a.m. as
to both defendants herein.

In the United States District Court
For the District of Arizona

April 1958 Term

At Phoenix

Minute Entry of
Friday, September 12, 1959
(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, presiding.

[Title of Cause.]

* * * * *

The Government having rested its case, in the absence of the jury, the defendant Rex L. Neely, by his counsel Louis B. Whitney, Esq., now moves for judgment of acquittal on each and every count of the indictment.

It Is Ordered that said motion for judgment of acquittal is denied.

In the United States District Court
For the District of Arizona

April 1958 Term

At Phoenix

Minute Entry of
Thursday, September 18, 1958
(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, presiding.

[Title of Cause.]

* * * * *

In the absence of the jury, the defendant Rex L. Neely by his counsel Louis B. Whitney, Esq., at the close of all the evidence, now moves for judgment of

acquittal on each and every count of the indictment.

It Is Ordered that the Motion for Judgment of Acquittal of the defendant Rex L. Neely is denied.

[Title of District Court and Cause.]

VERDICT

We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find the defendant, Rex L. Neely, Not Guilty as charged in count I; Not Guilty as charged in count III; Guilty as Charged in count V; Not Guilty as charged in count VII; Not Guilty as charged in count VIII; Not Guilty as charged in count IX; Not Guilty as charged in count X; Not Guilty as charged in count XI; Not Guilty as charged in count XII.

/s/ M. B. BARTLETT,
Foreman.

[Endorsed]: Filed September 19, 1958.

[Title of District Court and Cause.]

MOTION FOR ADDITIONAL TIME TO FILE CERTAIN MOTIONS

Comes Now Rex L. Neely, one of the defendants in the above entitled and numbered action and moves the Court for an order granting defendant up to and including October 6, 1958, within which to file a Motion for New Trial under Rule 33 and/or Motion in Arrest of Judgment under Rule 34 of the Federal Rules of Criminal Procedure.

Dated September 24, 1958.

WHITNEY & LaPRADE,
/s/ By LOUIS B. WHITNEY,
Attorneys for Rex L. Neely.

Order

Upon reading the foregoing motion, and good cause appearing therefor, It Is Ordered that the defendant Rex L. Neely have up to and including October 6, 1958 within which to file a Motion for a New Trial under Rule 33 and/or a Motion in Arrest of Judgment under Rule 34 of the Federal Rules of Criminal Procedure.

Dated September 24, 1958.

/s/ DAVE W. LING,
U. S. District Judge.

[Endorsed]: Filed September 24, 1958.

[Title of District Court and Cause.]

MOTION IN ARREST OF JUDGMENT

The defendant, Rex L. Neely, moves the Court to arrest the judgment on Count Five in the indictment for the following reasons:

1. Count Five of the indictment does not state facts sufficient to constitute an offense against the United States.

2. The Agricultural Adjustment Act is unconstitutional in that the Constitution does not grant to Congress any power to pass the Agricultural Adjustment Act.

Dated at Phoenix, Arizona, this 6th day of October, 1958.

WHITNEY & LaPRADE,
/s/ By LOUIS B. WHITNEY,
Attorneys for Rex L. Neely.

[Endorsed]: Filed October 6, 1958.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

The defendant, Rex L. Neely, moves the Court to grant him a new trial on Count Five in the indictment for the following reasons:

1. The Court erred in denying defendant's Motion for Acquittal made at conclusion of all the evidence.
2. The verdict is contrary to the weight of the evidence.
3. The verdict is not supported by substantial evidence.
4. The Court erred in charging the jury and in refusing to charge the jury as requested.

Dated at Phoenix, Arizona, this 6th day of October, 1958.

WHITNEY & LaPRADE,
/s/ By LOUIS B. WHITNEY,
Attorneys for Rex L. Neely.

[Endorsed]: Filed October 6, 1958.

In The United States District Court
For The District of Arizona
October 1958 Term At Phoenix
Minute Entry of
Monday, October 27, 1958
(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, Presiding.

[Title of Cause.]

Motion in Arrest of Judgment and Motion for
New Trial of defendant, Rex L. Neely, are called
for hearing. Wm. A. Holohan, Esq., Assistant
United States Attorney appears for the Govern-
ment. Louis B. Whitney, Esq. appears for the de-
fendant, Rex L. Neely. Said Motions are argued
by respective counsel.

It Is Ordered that the record show said motion
in arrest of judgment and motion for new trial are
submitted.

In The United States District Court
For The District of Arizona
October 1958 Term At Phoenix
Minute Entry of
Monday, December 29, 1958
(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, Presiding.

[Title of Cause.]

It Is Ordered that the Motion in Arrest of Judg-

ment and Motion for New Trial of defendant Rex L. Neely, are denied, and that this case is set for sentence Monday, January 12, 1959 at ten o'clock a.m. as to both defendants.

In The District Court of the United States
For The District of Arizona

No. C-14746 Phx.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

REX L. NEELY,

Defendant.

JUDGMENT

On this 12th day of January, 1959, at Phoenix, Arizona, came the attorney for the Government and the defendant appeared in person and by counsel.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and verdict of guilty of the offense of violating Title 18, Section 201, United States Code, (bribery), as charged in count 5.

The Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court, It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant pay a fine in the sum of \$1,000.00, and that the execution of

said judgment is stayed for a period of 24 hours, on said count 5.

/s/ DAVE W. LING,

United States District Judge.

[Endorsed]: Filed January 12, 1959.

[Title of District Court and Cause.]

ORDER FIXING BAIL PENDING APPEAL

Application having been made herein by counsel for appellant for bail pending appeal, upon consideration thereof, It Is Ordered that said motion be, and it is hereby granted, on condition that bail be fixed at \$2,000.00, and that the fine imposed of \$1,000.00 be paid conditionally to the Clerk of this Court, and It Is Hereby Ordered that upon the payment of said amounts to the Clerk of this Court, that the execution of the sentence requiring the defendant to pay a fine of \$1,000.00 be stayed under Rule 38 (a) (3) of the Federal Rules of Criminal Procedure and that said moneys be held by the Clerk of this Court, pending the final determination of said appeal.

And It Is Further Ordered that the Clerk deposit said moneys in the Registry of this Court, subject to the further order of this Court.

Dated this 12th day of January, 1959.

/s/ DAVE W. LING,

United States District Judge.

[Endorsed]: Filed January 12, 1959.

[Title of District Court and Cause.]

BOND PENDING APPEAL

Know All Men By These Presents:

That, Whereas, on the 12th day of January, 1959 in a suit pending in said Court between the United States of America, plaintiff, and Rex L. Neely, defendant, a judgment and sentence was rendered against the said Rex L. Neely, that he paid a fine of One Thousand Dollars (\$1,000.00), and the said Rex L. Neely has taken an appeal to the United States Court of Appeals for the Ninth Circuit to reverse the judgment and sentence in the aforesaid suit, and notice of such appeal in duplicate having been filed with the Clerk of the District Court of the United States for the District of Arizona, in the manner and within the time required by law and the rules of court in such cases made and provided, and

Whereas, after said notice of appeal had been filed as aforesaid, the United States District Court for the District of Arizona entered an order fixing bail pending appeal in the sum of Two Thousand and No/100 Dollars (\$2,000.00), as will more fully appear by said order fixing bail pending appeal on file herein; that \$2,000.00 in cash has been deposited in the Register of this Court.

Now, the condition of the above application is such that the said Rex L. Neely shall appear in the United States Court of Appeals for the Ninth Circuit in San Francisco, California, or such other

place as may be appointed by said Court, on such date or dates as may be appointed for the hearing of said cause in said Court, until finally discharged therefrom and shall abide by and obey all orders made by said United States Court of Appeals for the Ninth Circuit in said cause, and shall see to it that a fine of One Thousand Dollars (\$1,000.00) imposed by the United States District Court for the District of Arizona is paid, if said case is affirmed by the United States Court of Appeals for the Ninth Circuit, and if reversed for a new trial, he will appear therefor at such time as may be ordered, then the above obligation shall be void, else to remain in full force and effect.

/s/ REX L. NEELY,
Defendant-Appellant.

[Endorsed]: Filed January 13, 1959.

[Title of District Court and Cause.]

NOTICE OF APPEAL OF REX L. NEELY

Name and address of appellant: Rex L. Neely, 699 North Washington, Chandler, Arizona.

Name and address of appellant's attorneys: Louis B. Whitney, Loretta S. Whitney, and Paul W. LaPrade, 810 Luhrs Tower, Phoenix, Arizona.

Offense: Bribery, to-wit, tendering a check in the amount of \$1,750.00 to one Joe L. Short, an employee of the Pinal County Agricultural Stabilization and Conservation Committee, an Agency of the

United States, with intent to influence said Joe L. Short in his official capacity, in violation of Title 18, U.S.C.A., Section 201.

Concise statement of judgment or order, giving date, and any sentence: \$1,000.00 fine on Count V in the Indictment; date of sentence, January 12, 1959. Not committed and fine not paid; application to be made by appellant Rex L. Neely for bail.

I, the above named appellant, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above stated judgment dated January 12, 1959.

Dated January 12, 1959.

/s/ LOUIS B. WHITNEY,
/s/ LORETTA S. WHITNEY,
/s/ PAUL W. LaPRADE.

[Endorsed]: Filed January 12, 1959.

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE
RECORD ON APPEAL

Pursuant to the Defendant's application filed herein and good cause appearing therefor, it is

Ordered that the time for the Defendant-Appellant to file and designate the record on appeal in the United States Court of Appeals for the Ninth Circuit, be, and the same hereby is, extended to and including March 30, 1959.

Dated this 16th day of February, 1959.

/s/ DAVE W. LING,

United States District Judge.

[Endorsed]: Filed February 16, 1959.

[Title of District Court and Cause.]

CLERK'S CERTIFICATE TO RECORD

United States of America,

District of Arizona—ss.

I, William H. Loveless, Clerk, of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records of said Court, including the records in the case of United States of America, Plaintiff, vs. Rex L. Neely, Defendant, numbered C-14746 Phx., on the docket of said Court.

I further certify that the attached original documents bearing the endorsements of filing thereon are the originals of said documents filed in said case, and that the attached copies of minute entries are true and correct copies of the originals thereof remaining in my office in the City of Phoenix, State and District aforesaid.

I further certify that the said documents, together with the original exhibits transmitted herewith, constitute the record on appeal in said cause as designated, and the same are as follows, to-wit:

1. Indictment.
2. Minute entry of arraignment, October 28, 1957.
3. Motion of Rex L. Neely to dismiss Indictment.

4. Minute entry of November 27, 1957 (order denying Rex L. Neely's motion to dismiss Indictment).
5. Minute entry of December 9, 1957 (plea of not guilty).
6. Minute entry of defendant Rex L. Neely's motion for judgment of acquittal at close of Government's evidence and of order denying said motion.
7. Minute entry of defendant Rex L. Neely's motion for judgment of acquittal at close of entire case and of order denying said motion.
8. Verdict of jury as to defendant Rex L. Neely.
9. Transcript of testimony, including instructions to jury (Volumes 1 and 2).
10. Order enlarging time to file motion for new trial and motion in arrest of judgment.
11. Motion of Rex L. Neely in arrest of judgment.
12. Motion of Rex L. Neely for new trial.
13. Minute entry of argument on Motion for New Trial and Motion in Arrest of Judgment, October 27, 1958.
14. Minute entry of orders denying Rex L. Neely's motion for new trial and his motion in arrest of judgment, December 29, 1958.
15. Judgment assessing fine.
16. Order fixing bail pending appeal.
17. Bond of Rex L. Neely pending appeal.
18. Notice of Appeal.
19. Order Extending Time to File Record on Appeal.
20. Designation of Contents of Record on Appeal.

I further certify that all original exhibits in evidence are transmitted herewith as a part of this record on appeal as designated, to-wit:

Government's exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9a, 10, 11a, 11b, 11c, 11d, 11e, 11f, 11g, 12a, 12b, 12c, 12d, 12e, 12f, 13a, 13b, 13c, 14a, 14b, 14c, 15, 16a, 16b, 16c, 17a, 17b, 17c, 18a, 18b, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32, except exhibits 1, 2 and 3 which were withdrawn by order of the court, on stipulation.

Defendant's exhibits F, G, H, I, J, K, L, M, R, S and T.

Witness my hand and the seal of said Court this 27th day of March, 1959.

[Seal] WM. H. LOVELESS,
Clerk.

In The United States District Court
For The District of Arizona

No. C-14,746 Phx.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

REX L. NEELY and JOE L. SHORT,

Defendants.

TRANSCRIPT OF PROCEEDINGS

United States Courthouse, Phoenix, Arizona, commencing Wednesday, September 10, 1958, 10:00 A.M.

Before: Honorable Dave W. Ling, Judge, and a Jury.

Appearances: Jack D. H. Hays, United States District Attorney, William A. Holohan, Asst. United States Attorney, for the Plaintiff. Whitney & LaPrade, By Louis B. Whitney, Loretta Whitney, and Paul W. LaPrade, for the Defendant Rex L. Neely. William A. Stanfield, for the Defendant Joe L. Short. [1]*

Proceedings

The Clerk: Case Number C-14,746 Phoenix. United States of America, Plaintiff, versus Rex L. Neely and Joe L. Short, Defendants, for trial.

The Court: Ready, gentlemen?

Mr. Holohan: The Government is ready, your Honor.

Mr. Whitney: Defendant Neely is ready.

Mr. Stanfield: Defendant Short is ready.

The Court: Call the names of 28 jurors. As your names are called, come forward, please.

(Thereupon the Jury was duly impanelled and sworn to try the issues.)

(After which Counsel for the Government made an Opening Statement to the Jury.)

Mr. Whitney: If the Court please, Defendant Neely reserves his statement.

The Court: Very well. You may call your first witness.

Mr. Holohan: Tom Davis, please. [2]

* Page numbers appearing at top of page of Reporter's Transcript of Record.

TOM C. DAVIS

called as a witness in behalf of the Government,
having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Holohan): Will you state your name, please. A. Tom C. Davis.

Q. Where do you live, Mr. Davis?

A. Chandler, Arizona.

Q. By whom are you employed?

A. Federal Government.

Q. In what capacity?

A. Office Manager, Pinal County ASC Office.

Q. What does ASC stand for?

A. Agricultural Stabilization and Conservation.

Q. Is that a part of the Department of Agriculture? A. Yes, sir.

Q. In your capacity as Office Manager of the Pinal County ASC Office, do you have custody of the various government records that are contained there? A. Yes, sir.

Mr. Holohan: May these exhibits be marked for identification as 1, 2 and 3, all for identification.

(Said Documents were marked as Government's Exhibits 1, 2, and 3 for identification.)

Q. (By Mr. Holohan): In response to a subpoena by the Government, did you cause certain records to be brought here to Court?

A. Yes, sir.

Q. Starting, then, with Government's Exhibit 1 for identification, I will ask you to examine that, and do you recognize it? A. Yes, sir.

(Testimony of Tom C. Davis.)

Q. Is that a record of the Pinal County Agricultural Stabilization and Conservation Committee?

I am going to call it ASC to make it easier.

A. Yes, sir. It is the 1954 Listing Sheets.

Q. What is a Listing Sheet?

A. It is a sheet on which the history, the crop land, the man's name, the farm number that is assigned to a given farm, the actual history of the farm is given on it, and the actual mathematical calculations that are required to work out an allotment are made on that sheet.

Q. And that covers the crop year 1954?

A. Yes, sir.

Q. How are farms designated on the Listing Sheet, and specifically Government's Exhibit 1 for identification?

A. By number and by name, the name of the operator as well as the owner.

Q. Is that a record that is required to be kept in the [4] regular course of the Governmental business there? A. Yes, sir.

Q. And that record is one that you have custody over? A. Yes, sir.

Q. Now similarly with regard to Government's Exhibit 2 for identification, do you recognize that document or exhibit? A. Yes, sir.

Q. What is it?

A. The 1955 listing sheets.

Q. Is that again a record from your agency down there? A. Yes, sir.

Q. And kept in the regular course of your gov-

(Testimony of Tom C. Davis.)

ernmental business? A. Yes, sir.

Q. And of which you have custody?

A. Yes, sir.

Q. You have spoken of it as the 1955 Listing Sheet? A. Yes, sir.

Q. The same answers with regard to the 1954 Listing Sheet also apply to the 1955?

A. Except in a great many instances in the 1955 Listing Sheets, they did not show the owner of the land. They merely have shown the operator.

Q. What is the difference? [5]

A. One man owns the property, whereas he might farm it himself and be the owner and operator. In another instance he might own the land and live in California, and lease it to someone else.

Q. In which case the person actually managing the farm operation is known as the operator?

A. Is the operator, yes, sir.

Q. And in many instances, in the 1955 Listing Sheet, he would be the person designated there?

A. It should be the operator, is what is designated there.

Q. All right. Once a farm has been given a number by the ASC Committee down there in Pinal County, does that number continue from year to year?

A. Yes, sir, it continues from year to year. There are changes made in the numbers, in the system of numbering, and the like, but there is a continuation of that number, or if there is a change-over from one set of numbers to another.

(Testimony of Tom C. Davis.)

Q. I will hand you what has been marked Government's Exhibit 3 for identification, and I will ask you to examine that exhibit.

Do you recognize it?

A. Yes, sir.

Q. What is it?

A. It is the 1956 Listing Sheets.

Q. A record kept by your office down there? [6]

A. Yes, sir.

Q. In the regular course of Governmental business?

A. Yes, sir.

Q. And of which you have custody?

A. Yes, sir.

Q. The same description applies to it as applied to the others?

A. As applied to the other two, yes, sir.

Mr. Holohan: May this be marked as Government's Exhibit 4 for identification. And will you mark these as 5, 6, 7, and 8.

The Clerk: Government's Exhibits 4, 5, 6, 7, and 8 for identification.

(Said Items were marked as Government's Exhibit 4, 5, 6, 7, and 8, for identification.)

Q. (By Mr. Holohan): Now, Mr. Davis, I will hand you what has been marked Government's Exhibit 4 for identification, and ask you to examine that. Can you state whether you recognize it?

A. Yes, sir.

Q. What is it?

A. Marketing Card Register for 1954.

Q. And is that a record that is kept in the regu-

(Testimony of Tom C. Davis.)

lar course of Governmental business at the ASC Committee down in Pinal County? [7]

A. Yes, sir.

Q. A record of which you have custody?

A. Yes.

Q. What is a Marketing Card Register?

A. Well, in the case of allotment crops, a Marketing Card is issued to the farmer so that he may sell the crop.

The register of the marketing cards is merely the summary of who each card is issued to, the man's name, who it is issued to, the marketing card number, and the date.

Q. Government's Exhibit 4 applies to what year?

A. 1954.

Q. And to what crop?

A. Upland cotton, Short Staple cotton, whichever name you care to use.

Q. Upland cotton or Short Staple cotton?

A. Yes.

Q. I hand you what has been marked Government's Exhibit 6 for identification, and ask you whether you recognize that? A. Yes, sir.

Q. What is it?

A. It is a marketing card register for 1955 for Extra Long Staple cotton.

Q. Is that a record kept in the regular course of governmental business by the Pinal County ASC Office? A. Yes, sir. [8]

Q. And is it a record which is under your custody and control as manager down there?

(Testimony of Tom C. Davis.)

A. Yes, sir.

Q. What is Extra Long Staple?

A. The variety of cotton. The other was the Short Staple, this is the Long Staple, as it is referred to.

Q. This Government's Exhibit 6 for identification which you hold in your hand is for what year?

A. 1955.

Q. And for Extra Long Staple cotton?

A. Extra Long Staple cotton.

Q. And again with respect to the Extra Long Staple cotton, is the same procedure followed with regard to Marketing Cards, numbers, and so forth, dates, and so forth? A. Yes, sir.

Q. But a separate marketing card is given for Extra Long Staple, and a separate marketing card is given for the Upland or Short Staple?

A. Yes, sir.

Q. I will hand you what has been marked Government's Exhibit 5 for identification, and ask you with regard to that exhibit whether you recognize it?

A. Yes, sir.

Q. What is it?

A. It is a Marketing Card Register for Upland cotton for [9] 1955.

Q. Is that a record of the Pinal County ASC office? A. Yes, sir.

Q. Is it one that is kept regularly in the course of your governmental business, and of which you have custody and control? A. Yes, sir.

Q. All right, for the 1955 Upland Marketing

(Testimony of Tom C. Davis.)

Card Register, it is kept in the same manner that you have described as to the other exhibits?

A. Yes, sir.

Q. Now, I will hand you what has been marked Government's Exhibit 7 for identification, and ask you to examine that exhibit. A. Yes, sir.

Q. What is Government's Exhibit 7 for identification?

A. Register of Marketing Cards for 1956, and I presume that this is the Short Staple that is shown here. Yes, sir, this is the Short Staple.

Q. And again is that a record kept by the Pinal County ASC Office? A. Yes, sir.

Q. Is it kept in the regular course of governmental business of which you have custody and control? A. Yes, sir. [10]

Q. And kept in a similar manner to the other exhibits that you have described, 4 through 7?

A. Yes, sir.

Q. Now, I will hand you what has been marked Government's Exhibit 8 for identification, and ask you with regard to that whether you recognize that exhibit? A. Yes, sir.

Q. What is that?

A. In 1955, they were keeping this record on the Release and Reapportionment of Cotton.

Q. And who is the "they"?

A. The Pinal County ASC Office.

Q. Is that a record that is kept regularly in the office there and part of your governmental business? A. It was kept regularly then.

(Testimony of Tom C. Davis.)

Q. At that time? A. Yes.

Q. That practice has since ceased in Pinal County?

A. No, sir, it is incorporated into another record at the present time.

Q. You have maintained that record as part of the records of the office down there?

A. Yes, sir.

Q. And during the crop year of 1954, it was a record kept in the regular course of business, insofar as you know? [11] A. Yes.

Q. And you have custody over Government's Exhibit 8 for identification, as part of the records down there in the ASC Office in Pinal County?

A. Yes, sir.

Mr. Whitney: What was the number of that record?

Mr. Holohan: Government's Exhibit 8 for identification.

May these be marked as Government's Exhibits 9 and 10 for identification.

(Said Items were marked as Government's Exhibits 9 and 10 for identification.)

Q. (By Mr. Holohan): I hand you Government's Exhibit 9 for identification, and ask you to examine that exhibit. A. Yes, sir.

Q. Do you recognize it? A. Yes, sir.

Q. And what is it? A. A Farm Folder.

Q. When you say a Farm Folder, what do you mean by that?

A. In the normal course of business in the ASC

(Testimony of Tom C. Davis.)

Office, each farm has a number. Each farm then in turn has a farm folder, where the pertinent information on that farm is kept.

Q. The pertinent information, their various Government Forms, and so forth?

A. Forms, notifications, any correspondence, and so forth. [12]

Q. Now, you have described Government's Exhibit 9, I believe it is, for identification?

A. Yes.

Q. As such a Farm Folder? A. Yes.

Q. For what farm? A. Farm Number 595.

Q. Is that a record, or the document there, is that kept in the regular course of your governmental business down there? A. Yes, sir.

Q. And is it part of the Government records of which you have custody and control?

A. Yes, sir.

Q. Finally, I will hand you Government's Exhibit 10 for identification, and ask you whether you recognize that exhibit? A. Yes, sir.

Q. What is 10 for identification?

A. The Agricultural Conservation Program which is handled through the ASC Office pays the farmer to do a certain amount of conservation work on his farm under given conditions.

This is a list of the business that went on during 1954 and 1955, the letters of transmittal, the cover sheets for those letters of transmittal.

Q. Concerning these so-called agricultural conservation [13] practices? A. Yes, sir.

(Testimony of Tom C. Davis.)

Q. Is that record kept regularly in the course of business by the ASC Committee in the Pinal County Office? A. Yes, sir.

Q. Is it a record of which you have custody and control? A. Yes, sir.

Mr. Holohan: You may cross examine the witness.

Cross Examination

Q. (By Mr. Whitney): Mr. Davis, how long did you say you had been Office Manager?

A. I went to work there the 15th of February, Mr. Whitney.

Q. This year? A. Yes, sir.

Q. And did you ever work for that office before?

A. No, sir.

Q. Now, with these exhibits that you have identified, they are just folders and listing sheets that you found in the office? A. That is right.

Q. And with reference to the folders, do you know whether or not, of your own knowledge, that they are complete? [14] A. No, sir.

Q. With reference to this Listing Sheet, you still keep those? A. Yes, sir.

Q. You have a different method of measuring this year? A. Yes, sir.

Q. Than you had previous years, is that right?

A. That is correct.

Q. And you posted it on the bulletin board down there, that the measurements would not be made as heretofore, is that right? A. That is correct.

(Testimony of Tom C. Davis.)

Q. Now, when you measure land, you get the farmer to come down while the measurement is going on, is that right?

A. The farmer or his representative, yes, sir.

Q. That wasn't done theretofore?

A. No, sir.

Q. No? A. No, sir, it was not done before.

Q. And in connection with the listing sheets which I examined down in your office here several days ago, where did you get the information to put on those sheets? I am asking you now so that the jury will understand.

A. Do you mean the original Listing Sheets when the allotment started? [15]

Q. These listing sheets here that have been identified as Government's Exhibit 1, 2, and 3.

I will take number 3 here on top. Where is the information gotten that goes into those?

A. Well, on any of these, the information is primarily picked up from the Listing Sheets from the year before.

Originally, when the allotments first started in 1950, the farmers filed a report with the ASC offices telling them how many acres of various crops they had grown over a period of time, and that was used for the history. And then again in the fall of 1953, I believe it was necessary for the farmers to once again report this acreage, and that was the basis for starting out the original 1954, which I believe is Government's Exhibit number 1.

Q. Now, take the year 1953, there was no Gov-

(Testimony of Tom C. Davis.)

ernment restriction then on cotton that year, was there? A. No, sir, not that I remember.

Q. They started that program again in 1954?

A. Yes, sir.

Q. So these listing sheets were 1954, 1955, and 1956? A. Yes, sir.

Q. Do you get any of the information from those listing sheets from what is known as a Control Register? A. A Control Register?

Q. Yes, sir. [16]

A. I don't know what you mean by a control register, Mr. Whitney.

Q. These documents that Mr. Hays handed me this morning, or rather I think you did, what do you call those?

A. That would be a good name, Mr. Whitney, just what you wanted to call them. These are a record kept in the office which is not required to be kept, and just about whatever name anyone might care to assign it would be fine.

And this year we are referring to them as Community Record Sheets.

Q. And you have regular printed sheets made up this year? A. Mineographed sheets.

Q. And they had those before, did they?

A. No, sir, not that I know of. As I understand it, they used these columnar pads.

Q. The mimeographed sheets you have this year contain some columns on it that are not shown in this document? A. Yes, sir.

Q. Is that correct?

A. Yes, sir, I believe so.

(Testimony of Tom C. Davis.)

Q. And what do you use those for? I am talking about the ones you are using now.

A. The ones being used now, we are attempting to have a record there which will be of help to us in determining when [17] a particular farm is in compliance, and when a marketing card can be issued for that farm, when the marketing card is issued.

Q. And what were these used for?

A. Well, as best I can see, they were used for basically the same thing, showing the date the notices were mailed, showing the allotment, the acreage——

Mr. Holohon: I object to his going any further into the document unless he can show he knows of his own knowledge.

The Court: All right.

Q. (By Mr. Whitney): Do you know of your own knowledge what they were used for?

A. No, sir.

Q. But you used practically the same thing now, with the exception of an extra column or two?

A. Basically, yes, sir. It is approximately the same.

Q. And what years did these cover?

A. I believe they are 1955 and 1956, unless I am mistaken. I frankly don't see a date on this. Yes, sir, 1956 for this one.

Q. 1956? A. Yes, sir.

Q. And the one under it? A. 1956——

Q. The one that was marked in the other case, Government's [18] Exhibit 6.

(Testimony of Tom C. Davis.)

A. This is 1955.

Q. That was the one in the other case that was marked—it was not marked, apparently.

Mr. Whitney: Mr. Clerk, I would like to have these marked for identification.

The Court: The Court will stand at recess until two o'clock. Keep in mind the Court's admonition, that during the recess you are not to discuss the case among yourselves, nor permit anyone to discuss it with you. Also avoid forming or expressing any opinion upon any subject connected with this case.

(The noon recess was taken.) [19]

Afternoon Session

Two o'clock p.m.

Court resumed pursuant to recess.

Present: Same as before.

The Court: You may continue.

Mr. Whitney: Will you mark these as exhibits for identification.

The Clerk: Defendant's Exhibits A and B for identification.

(Said Documents were marked as Defendant's Exhibits A and B for identification.)

TOM C. DAVIS

resumed the stand and testified further as follows:

Cross Examination—(Continued)

Q. (By Mr. Whitney): Now, Mr. Davis, referring to Defendant's Exhibits A and B for identifi-

(Testimony of Tom C. Davis.)

cation, you say these are no part of the official records?

A. No, sir. So far as I know, they are not required in any official sense.

Q. What are they used for? [20]

A. Merely for our own use, to determine when the farms are in compliance, to have a complete record we can refer to rapidly, and check and follow up on.

Q. Then they have some purpose?

A. Yes, they have a purpose.

Q. In connection with the other records?

A. Yes, sir.

Mr. Whitney: I see. Now, then will you mark this for identification please.

(Said Document was marked as Defendant's Exhibit C for identification.)

Q. (By Mr. Whitney): Mr. Davis, referring to Defendant's Exhibit C for identification, tell me what that is.

A. This is the little form we fixed up in the County Office that we use for approximately the same purpose.

Q. That A and B?

A. That A and B were used for in years gone by.

Q. It has other columns, however, this form you have in your hand, Exhibit C for identification?

A. Yes, sir. Well, for identification—I don't remember the way the others were headed up well enough to say. I don't believe it showed the oper-

(Testimony of Tom C. Davis.)

ator's name, merely the farm number, unless I am mistaken.

Q. I will hand you "A" so you can make some comparison, and tell us what the difference is. [21]

Mr. Holohan: I believe we will have to object to comparing these, and taking the evidence from them before they are even offered.

The Court: He is going to compare them. If it isn't in evidence, I will see to that.

A. (By the Witness): The major difference is that we have Soil Bank to take into consideration now, and this identified the farms by farm number, whereas we identify them both by farm number and name at the present time.

Q. (By Mr. Whitney): And this Exhibit "A" doesn't identify them by name?

A. No, sir, I don't believe so.

Q. Just by farm number?

A. Just by farm number, to the page I opened to.

Q. And Exhibit "C" not only does it by farm number, but by farm name? A. Yes.

Q. And that is used in your office in connection with your work? A. That is right, sir.

Q. Exhibit "C" is just the same as Exhibit "A" and "B" prior to the time you came to that office?

A. I presume it is exactly the same as they would use, sir. So far as I know, yes, sir.

Q. Now, in connection with the listing sheets, Government's [22] Exhibits 1 and 2 and 3 for identification, referring to number 1, which is the 1954

(Testimony of Tom C. Davis.)

Listing Sheets. Will you tell us what is shown on those various columns. A. Well——

Q. Of course, you didn't make them up?

A. No, sir. It starts out with the farm number, serial number, the name of the operator, the name of the owner. It shows the total crop land, and the deductible crop.

Back at that time they were basing a certain amount of weight to the amount of water that was available on a given farm. Just what their basis for that was I do not know.

And I would presume that that is their difference between the total crop land and the deductible crops here.

Q. Some of those figures are made out from formula, and it would take a mathematician to figure it out?

A. I can't give you the basis for that. I don't know what the basis for that is. I don't know what the basis for the adjusted crop land was.

Q. But it is done by formula?

A. I couldn't answer that, I don't know.

Q. Go ahead.

A. Then the next three columns here give you your history of the planted cotton. Then it is shown over here under Highest Planted Crop out of the three years the history was being adjusted from. Then the total crop land, then the [23] adjusted crop land. From there on it is merely a matter of multiplying the factor against the highest planted, or against the adjusted crop land. I couldn't tell

(Testimony of Tom C. Davis.)

you without a calculator, and then going ahead and making the mathematical computations to end up with a cotton allotment over here for that particular farm.

Q. The farmer has nothing to do with making up those adjustments, does he? A. No, sir.

Q. He never sees them?

A. Yes, sir. Most of the farmers during the course of the year will come in to see them. They are open to the farmers whenever they want to see them.

Q. Whenever they want to see them they could?

A. Yes.

Q. Could the ordinary farmer look at that sheet and understand it?

A. I would hate to answer that. I don't know.

Q. You yourself can't understand some of it?

A. Part of it I do not understand.

Q. I see. Do you know of a farm 596?

A. No, sir, I am afraid I would have to have my memory refreshed on that.

Q. Is there a farm 596 in the 1954 listing Sheets, Government's Exhibit 1 for identification? [24]

A. Yes, sir. 596.

Q. And who does that show?

A. It shows Mr. A. C.—

Mr. Holohan: We object to what that shows. If counsel wants to pursue that at this time, we offer Government's Exhibit 1 for identification in evidence as Government's Exhibit 1.

The Court: It may be received.

(Testimony of Tom C. Davis.)

Mr. Whitney: You want to offer this?

Mr. Holohan: Yes.

Mr. Whitney: No objection.

The Court: It may be received.

The Clerk: Government's Exhibit 1 in evidence.

(Said Listing Sheets were received in evidence as Government's Exhibit 1.)

A. (By the Witness): Mr. A. C. Stewart is shown.

Q. (By Mr. Whitney): As the operator?

A. And as the owner.

Q. I see. And 595?

A. John Woodruff is the operator. Kemper Marley is the owner.

Q. I assume it is shown on the 1955 and 1956?

A. Not without looking, I don't know, but I presume they would, sir.

Q. When you went into the office, did you make any [25] attempt to familiarize yourself with the Listing Sheets, Government's Exhibits 1, 2, and 3?

A. No, sir, because we were primarily interested in the 1958, and not in that, so I haven't made any attempt to——

Q. I see. Now, did you learn while you were in that office, since you have been there, that the practices in that office have been rather loose?

A. Yes, sir.

Q. Heretofore, is that right? A. Yes, sir.

Q. Very loose? A. Yes, sir.

Q. And that you found that farmers in 1954,

(Testimony of Tom C. Davis.)

1955, and 1956 overplanted, a great many of them, in that County?

A. You mean they were overplanted when they were originally measured, now?

Q. That is right. A. Yes, sir.

Q. Did you make any examination of Defendant's Exhibits A and B? A. No, sir.

Q. To determine—— A. No, sir.

Q. You never made any examination?

A. No, sir. [26]

Q. Now, the measurements that are now being made, I mean in 1958, of the farmers' land in cotton is done a lot differently from what it was in 1954, 1955, and 1956?

A. As I understand the way it was done then, yes, sir.

Q. Well, you know, Mr. Davis, as a matter of fact, it is? A. Yes, that is true.

Mr. Whitney: I see. Mark this for identification, please.

(Defendant's Exhibit D marked for identification.)

Q. (By Mr. Whitney): Referring to Defendant's Exhibit D for identification, I believe you have had a copy of this made for me when I was down there, do you remember that, on the bulletin board?

A. Yes, sir.

Q. And now that states that the measurements will be different?

A. Yes, sir, in a different manner.

Mr. Whitney: I see. I offer "D" in evidence.

(Testimony of Tom C. Davis.)

Mr. Holohan: We object to it as being wholly immaterial to the case at issue now.

The Court: Well, we can re-offer it, you can re-offer it on your defense.

Mr. Whitney: Pardon?

The Court: You can re-offer it again on the defense.

Mr. Whitney: Thank you. [27]

Q. (By Mr. Whitney): Were you with the office down there at Casa Grande on and prior to October 11, 1957? A. No, sir.

Q. From an examination that you have made since you have been in the office, you did determine, as you stated, that a good many farmers had over-planted? A. Yes, sir.

Q. In 1954, 1955, and 1956? A. Yes, sir.

Q. And many of those farmers did not destroy their cotton? A. No, sir.

Q. You don't know that?

A. No, sir. So far as I know, the largest part of them did destroy.

Q. There were some of them that didn't?

A. Well, now, you are asking a question I can't answer, sir. I don't know.

Mr. Whitney: I think that is all.

Cross Examination

Q. (By Mr. Stanfield): Mr. Davis, you are the, shall I use the term current Office Manager for the ASC Committee down in Casa Grande?

(Testimony of Tom C. Davis.)

A. That is correct. [28]

Q. In Pinal County? A. Yes.

Q. Did you tell us earlier when you began your employment there?

A. I don't remember. It was the 15th of February of this year.

Q. Prior to that date, what was your employment? A. Farmer.

Q. Was this your first experience with the Department of Agriculture as an employee?

A. Yes, sir.

Q. When you were so employed, were you directly employed as Office Manager?

A. Yes, sir.

Q. Were you given to understand particular responsibilities and duties that were to be imposed on you?

A. To a degree. I don't believe at that time I understood the full extent of them, no, sir.

Q. Do you now understand the full duties of your post? A. Well, I think that I do.

Q. Would you briefly kind of outline what your duties are?

A. Well, primarily, the office manager of an ASC office is employed by the County Committee in order to carry their policies out in the day by day operations of the office. And [29] to attempt as best he can to keep current with the various changes in the program that are administered from there, and see to it that those changes are incorporated into

(Testimony of Tom C. Davis.)

the normal functions of the office, and basically, that is approximately what it amounts to. We could go into more detail on a given field of it.

Q. I may ask you one or two questions about that.

Aside from the cotton allotment program, are there other programs that are handled through the office by you? A. Yes, sir.

Q. Would you enumerate those?

A. Well, there is the acreage reserve program under the Soil Bank this year. There is the Agricultural Conservation Program. There is the Wool Program. There is the Price Support Program.

Those are the fundamental basic programs that are handled through that office.

Q. Do you know how many of these, if any, involve handling of funds? A. You mean——.

Q. With relationship to the farmers.

A. You mean insofar as passing a check or draft on to the farmers?

Q. Yes.

A. Your Soil Bank, your Wool, and Price Support are the [30] only ones where you directly hand a check on to the farmer, or mail a check, draft on to the farmer.

Q. Would it be a fair statement that the ones in which you do not handle the money yourself involve procedures that eventually involve money or checks? A. A part of them, yes, sir.

(Testimony of Tom C. Davis.)

Q. I see. Aside from the Soil Bank, which I assume became effective, I believe, in 1956, does the program, to your knowledge, differ greatly from 1954 and 1955?

A. Well, frankly, since I have been there I have been so busy trying to catch up to where it is at the present time, that I can't answer that very well.

Q. You don't know really?

A. No, sir, I don't know.

Q. Among other things, as a manager of the office there you are required to formulate and prepare a budget for the office each year, are you not?

A. That is correct.

Q. And in fact you prepared one for the fiscal year of June, 1958, to July, 1959?

A. That is correct.

Q. Do you have in your own mind at this moment a recollection of approximately what the budget for this year in which we are in amounted to?

A. Approximately 60 thousand dollars.

Q. Do you have any recollection of what the budget for the prior year was?

A. Approximately the same.

Q. Do you remember who your predecessor is?

A. There?

Q. Yes. A. Ed Ketterling.

Q. Do you have any knowledge of when he started his employment?

A. No, I have never looked in the Personnel Folder to see.

(Testimony of Tom C. Davis.)

Q. Do you have off-hand any recollection of the number of employees that you now have engaged there at the office?

A. Normally, we have six employees there at the office.

Q. Is this normal?

A. That's right, normally that's what we have.

Q. What do you have now? A. Five.

Q. Does that include the personnel that are hired to measure fields?

A. No, that is the office employees.

Q. In your head, do you have an approximate estimate of the cotton allotment prorated to Pinal County for the year 1958?

A. Approximately 147,000 acres. [32]

Q. Do you know whether that is more or less than 1957?

A. In 1957 it is slightly more. I don't know how much.

Q. I must have confused myself there. You mean 1957 is more?

A. No, 1957 is less than 1958.

Q. Do you know off-hand how this compares with 1956? A. No, sir.

Q. These records you have produced here today were produced as the result of subpoena by the Government, that is correct, isn't it? A. Yes, sir.

Q. Were these records at the time of the serving of the subpoena in your possession down there at the office in Casa Grande?

(Testimony of Tom C. Davis.)

A. A portion of them were.

Q. Do you know where the remainder were?

A. With Mr. Hays, the District Attorney's Office.

Q. Where did you keep your records down there in the office, in particular, these records?

A. You mean the geographic location of the office?

Q. Well, in what sort of a container, for instance?

A. Well, a portion of them would be in filing cabinets, such as the Listing sheets, or kept in large map cases.

Q. They were not kept in the safe, or segregated apart from the other records, were they? [33]

A. No.

Mr. Stanfield: I have no further questions at this time.

Mr. Holohan: We have no further questions of the witness. May he be excused permanently?

The Court: He may be as far as the Court is concerned.

Mr. Whitney: I may have to use him. I made the request.

Mr. Holohan: All right.

The Court: All right, you are not excused permanently.

(Witness excused temporarily.)

Mr. Holohan: The Government calls Mr. Mathis as its next witness. [34]

H. L. MATHIS

called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Mr. Holohan: May this be marked for identification as Government's Exhibit 11, and this be marked Government's Exhibit 12 for identification.

(Said Records were marked as Government's Exhibits 11 and 12, respectively, for identification.)

Direct Examination

Q. (By Mr. Holohan): Tell us your full name, please. A. H. L. Mathis.

Q. Where do you reside, Mr. Mathis?

A. I live at Bapchule, Arizona.

Q. What is your employment?

A. I am self-employed in the retail grocery business.

Q. That is a trading post out on the Reservation, isn't it? A. Yes, it is.

Q. Have you ever been employed by the Pinal County ASC office? A. Yes, sir, I was.

Q. When did you first go to work for them?

A. In May of 1955. [35]

Q. What was your job? A. I was a clerk.

Q. How long did you remain with the office?

A. I was there until September 1st of 1957.

Q. What positions did you hold throughout that period of '55 to '57?

A. I was Clerk until January, 1957, when I took over from Mr. Short as Office Manager.

(Testimony of H. L. Mathis.)

Q. Then in January, 1957, you became the Office Manager, and you held that post until when?

A. The 1st of September.

Q. Of 1957? A. Of 1957, yes.

Q. While you were the office manager in 1957, in January of that year were you subpoenaed to appear before the Grand Jury here in Phoenix and bring with you certain records from the office down there at Pinal County? A. I was, yes, sir.

Q. I will hand you what has been marked Government's Exhibit for identification number 11, and Government's Exhibit 12 for identification, and ask you to examine the exhibits, and were they the exhibits that you brought to the Grand Jury?

A. Yes, sir, they are.

Q. Were they records from the Pinal County ASC Office? [36] A. Yes, sir.

Q. Records kept in the regular course of governmental business there? A. Yes, sir.

Q. And as County Manager during that period you had custody and control of such records?

A. Yes, sir, I did.

Q. Specifically, without going into the actual documents, what is Government's Exhibit 11 for identification?

A. Well, the first sheet is a——

Q. Without going into those sheets, is there a general designation for the exhibit?

A. This is an old farm folder.

Q. For what farm? A. For Farm 647.

Q. That is "11"?

(Testimony of H. L. Mathis.)

A. That is Government's Exhibit 11, yes, sir.

Q. Now, Government's Exhibit 12 for identification, would you examine that and tell us generally what this is?

A. This is an ACP folder for Farm 647.

Q. Are you familiar with the document known as Form 578? A. Yes, sir.

Q. All right. What is 578?

A. It is a form that is used to record the measured acreage and the destroyed acreage on any farm within the county. [37]

Q. Are they forms provided by the regulations of the Department of Agriculture?

A. Yes, sir, they are.

Q. So in short, they are official forms?

A. Yes, sir.

Mr. Holohan: Will you mark these.

The Clerk: Government's Exhibits 11-A, 11-B, 11-C, and 11-D for identification.

(Said documents were marked Government's Exhibits 11-A, 11-B, 11-C, and 11-D, respectively, for identification.)

Q. (By Mr. Holohan): Now I will hand you three documents which I have withdrawn from Government's Exhibit 11 for identification, and ask you whether those documents, first of all, are examples of this form 578, that we are talking about?

A. Yes, sir, they are.

Mr. Whitney: You mean samples of it?

Q. (By Mr. Holohan): Now, I will hand you

(Testimony of H. L. Mathis.)

what has been marked Government's Exhibit 11-D, and ask you is that a 578 also?

A. Yes, sir, it is.

Q. Going to Government's Exhibit 11-A, for what farm is that a 578? A. Farm 647.

Q. Does it carry the operator's name on it? [38]

A. Yes, sir, it does.

Q. Who is the operator? A. Rex Neely.

Q. All right, now, calling your attention, then, to 11-B, to what farm does that apply?

A. That is the same farm 647.

Q. Who is the operator? A. Rex Neely.

Q. Is there a purported signature on it?

A. Yes, sir, there is.

Q. What is the purported signature?

A. The signature of committeeman or reporter is Joe L. Short, and the signature of the operator or representative is Rex L. Neely.

Q. Now, on Government's Exhibit 11-A, if I may go back to that a moment, for what year is that 578? A. This is for the year 1954.

Q. And for what crop? A. For cotton.

Q. Any particular type? A. Short staple.

Q. The same questions with regard to 11-B, what year does it cover? A. It covers 1955.

Q. And for what crop on 11-B? [39]

A. Short staple crop.

Q. Now, with regard to Government's Exhibit 11-C, is there a designation as to the farm?

A. Farm 647.

(Testimony of H. L. Mathis.)

Q. Is there any designation as to the name of the operator on there?

A. No, sir, there is not.

Q. Is there any purported signature on it?

A. Yes, sir, there is.

Q. What are they?

A. Signature of committeeman or reporter is Joe L. Short, and the signature of the farm operator or representative is Rex L. Neely.

Q. What crop?

A. This is Long Staple cotton.

Q. Finally, for Government's Exhibit 11-D for identification, what farm is that?

A. Farm 647.

Q. And the farm operator? A. Rex Neely.

Q. Purported signature?

A. The signature of farm operator is Rex L. Neely.

Q. And of the reporter or committeeman, no signature?

A. There is no signature there.

Q. What crop is covered? [40]

A. Short Staple cotton.

Mr. Whitney: That is 1956, isn't it?

Mr. Holohan: Yes. May this be marked Government's Exhibit 11-E for identification?

(Said document was marked Government's Exhibit 11-E for identification.)

Q. (By Mr. Holohan): Now, I will hand you what has been marked Government's Exhibit 11-E for identification, and what type of form is that?

(Testimony of H. L. Mathis.)

A. This is a Notice of Allotment.

Q. What do you mean by that?

A. Well, every operator receives a notice of this sort to tell them what their allotment for short staple and long staple cotton will be for that year.

Q. All right. To what farm does this apply?

A. Farm 647.

Q. And the operator? A. Is Rex Neely.

Q. And the address?

A. 699 North Washington, Chandler, Arizona.

Q. With regard to this document 11-E, how is that type of document prepared?

A. They are prepared from the listing sheets. Then they are presented to a member of the County Committee for signature and approval, and then they are mailed to the operators. [41]

Q. We have Government's Exhibit 11-E, which has come from the Farm Folder. Is there a copy of the original, or what is it that is sent to the farmer?

A. The original is sent to the farmer, and a copy is retained in the County Office files.

Q. What color is the original? Is it different from this Government's Exhibit?

A. It was white.

Q. White. Now I will hand you what has been marked Government's Exhibit 2 for identification, and ask you whether you recognize the document?

A. Yes, sir.

Q. And what is it?

(Testimony of H. L. Mathis.)

A. It is the listing sheets for Pinal County for the year 1955.

Q. For what crop there?

A. This is for the Short Staple cotton.

Q. All right. Now, on the listing sheets, was it required that there be an approval by the County Committee of the allotments set forth there?

A. Yes, sir.

Q. Does Government's Exhibit 2 bear such a section showing approval?

A. Yes, sir, it does.

Q. All right. And where is that? [42]

A. In Allotments Approved by County Committee.

Q. With purported signatures of——

A. Henry Haley and J. E. Beggs.

Q. During your course as an employee of that Committee, you worked with those Committeemen, and you are familiar with their writing?

A. Yes, sir.

Q. Now, calling your attention to one of the pages there, page 19, of the listing sheet there, is there an allotment set forth for Farm 647?

A. Yes, sir, there is.

Q. Now, within this same exhibit, Government's Exhibit 2 for identification, is there any with regard to Long Staple, and more especially, Farm 647?

A. Yes, sir.

Q. And where is that?

A. This is on a new farm supplement for 1955, for Long Staple.

(Testimony of H. L. Mathis.)

Q. And does that show the approval of the County Committee there?

A. Yes, sir, it does.

Q. And what are the signatures on that that you recognize?

A. Henry D. Haley, and R. B. Elsberry.

Q. And there is allotment for Extra Long Staple cotton designated for this Farm 647? [43]

A. Yes, sir, there is.

Mr. Holohan: At this time the Government offers in evidence Government's Exhibit 2 for identification as Government's Exhibit 2.

Mr. Whitney: No objection, as far as I am concerned.

Mr. Stanfield: No objection.

The Court: It may be received.

(Said document was received in evidence, and marked as Government's Exhibit 2.)

Q. (By Mr. Holohan): Now with regard to Government's Exhibit 3 for identification, do you recognize that document?

A. Yes, sir, this is the Listing Sheet for Pinal County for the 1956 year.

Q. All right. Do you find on the document here on Page 1 there for Short Staple Cotton the approval of the County Committee for the allotments for that year for Short Staple Cotton?

A. Yes, sir, I do.

Q. All right. And the signatures appear thereon that you recognize?

A. J. E. Beggs, and Henry D. Haley.

(Testimony of H. L. Mathis.)

Q. All right. Now, is there an allotment shown for Farm 647? A. Yes, sir, there is.

Q. And is there the operator's name stated there? [44] A. Yes, sir, it is.

Q. That is stated as—— A. Rex Neely.

Q. Where in the column here do we find the allotment?

A. The original approved farm allotment, column 21.

Q. Column 21 tells us what the allotment is, then? A. Yes.

Mr. Holohan: At this time the Government offers in evidence Government's Exhibit 3 for identification as Government's Exhibit 3.

Mr. Whitney: Defendant Neely has no objection.

Mr. Stanfield: No objection.

The Court: It may be received.

(Said document was received in evidence as Government's Exhibit 3.)

Q. (By Mr. Holohan): I will hand you what has been marked Government's Exhibit 11-E for identification, which you have identified as a Notice of Acreage Allotment for Upland cotton for the year 1956.

Do you recall who prepared that notice?

A. No, sir, I don't.

Q. Would you examine the date of the notice.

A. December first, 1956.

Q. Does that refresh your recollection as to anything?

A. No, sir, I am afraid it doesn't. [45]

(Testimony of H. L. Mathis.)

Mr. Holohan: May this be marked as Government's Exhibit 11-F for identification.

(Said document was marked as Government's Exhibit 11-F for identification.)

Q. (By Mr. Holohan): Now, I hand you Government's Exhibit 11-F for identification, a document taken from the folder of Government's Exhibit 11 for identification. And I will hand you Government's Exhibit 11-D for identification, and I will ask you to examine those documents.

Now, with regard to Government's Exhibit 11-F, first of all, what is that?

A. This is a Notice of Farm Acreage Allotment, Farm 647.

Q. All right. And for what crop year?

A. For 1956.

Q. All right, now as for Farm 647, the operator is designated thereon as? A. Rex Neely.

Q. Now, look at Government's Exhibit 11-E for identification. And that is a notice of allotment for what year, what crop year?

A. For crop year 1956.

Q. With those documents in your hand, does that refresh your recollection as to who prepared Government's Exhibit 11-E? A. No, sir.

Q. All right. In the year 1956 did you ever receive any [46] instructions from the Defendant Short with regard to preparation of a Notice of Allotment for Farm 647?

A. Not that I recall.

(Testimony of H. L. Mathis.)

Mr. Holohan: May these documents be marked in sequence for identification, starting with 12-A.

Q. (By Mr. Holohan): Did you know the Defendant Short from your work there at the ASC Committee Office in the years 1955 and 1956?

A. Yes, sir, I did.

Q. What position did he hold while you were there?

A. He was the Pinal County Office Manager.

Q. Do you know what position he held before you came there, if any?

A. No, sir, I don't.

Q. Did you ever have a conversation in 1956 with the Defendant with regard to the 578, Form 578 of the Defendant Neely?

A. Only one time that I can recall.

Mr. Whitney: What was that answer?

The Witness: One time that I can recall.

Q. (By Mr. Holohan): Where did the conversation take place, sir?

A. It was not a conversation. Mr. Short had suffered a stroke, and he was in the hospital.

Q. And who was present, as best you recall?

A. I don't believe anybody was present but Mr. Short and myself.

Q. And do you recall when this was?

A. Oh, I would say sometime the latter part of the year, September, October.

Q. Of what year? A. Of 1956.

Q. And what was your query to Mr. Short?

A. I went down to find out if Mr. Short knew,

(Testimony of H. L. Mathis.)

or if he had any information concerning the 578 on Mr. Neely's farm, and I asked him if Rex was all right, and he indicated that he was.

Q. All right. At the time that you went to see the Defendant in the hospital on this occasion, did you know where the 578 was for this Neely farm 647? A. Yes, sir, we had located the 578.

Q. You had located it? A. Yes.

Q. Where was it located?

A. It was in Mr. Short's desk in his office.

Q. It was not in the regular Farm Folder?

A. No, sir, it was not.

Q. Is Government's Exhibit 11-D that document? A. Yes, sir.

Q. That is the 578 that you located? [48]

A. Yes, sir.

Q. Now, you had looked over this 578 before you went to see the Defendant? A. Yes, sir.

Q. And he indicated to you that Neely was all right? A. Yes, sir.

Q. Now, thereafter, did the Defendant Neely come to the office to secure his marketing card?

A. Yes, sir, sometime after. I don't remember when.

Q. And was he issued a marketing card?

A. Yes, sir, he was.

Q. I will hand you what has been marked Government's Exhibit 7 for identification, and ask you whether you recognize the document?

A. Yes, sir.

Q. What is it?

(Testimony of H. L. Mathis.)

A. It is a form MQ-90, a Marketing Card Register for the year 1956.

Q. Is there an entry for Farm 647 showing the issuance of a Marketing Card?

A. Yes, sir, there is.

Q. Does it show by whom the Marketing Card was issued? A. No, sir, it doesn't.

Q. Do you recognize the writing?

A. No, not off-hand, I don't. [49]

Q. Is the entry also dated? A. Yes, sir.

Q. All right.

A. October. October the third, 1956.

Q. All right. At a subsequent date, after the issuance of the Marketing Card, did you go to the farm operation of the Defendant Neely?

A. Yes, sir, I did.

Q. Were you accompanied by anyone?

A. Yes, sir, Mr. Ray Wolfe.

Q. Did you take any action with regard to the Defendant's farm operation there?

A. We measured his cotton, or his stalks, I should say.

Q. All right, during the course of measurement did you come in contact with anyone there at the farm?

A. We saw Mr. Neely when we first drove up to obtain his permission to measure his farm.

Q. Did you have a conversation with him?

A. Very little.

Q. All right. Who was present at that time?

A. Mr. Wolfe and myself, and Mr. Neely.

(Testimony of H. L. Mathis.)

Q. And about when was this?

A. I would say in the latter part of November.

Mr. Whitney: Of what?

The Witness: Of November. [50]

Q. (By Mr. Holohan): Of what year?

A. 1956.

Q. What did you or Mr. Wolfe say to Neely?

A. Mr. Wolfe, I believe, carried the conversation. He asked Mr. Neely if he had any objections to his measuring his farm, that our instructions from the State Office were to obtain figures on the cotton that he had planted, and which Mr. Neely gave us permission to measure his farm.

Q. All right, was anything else said then?

A. Not at that time. I believe later that day Mr. Neely came by and indicated to us that he had a lease on it to Mr. Short.

Q. What did he say, as best you can recall?

A. Just to the effect that he had a lease.

Q. Who was present at this conversation, now?

A. Sir?

Q. Who was present at this conversation?

A. Mr. Neely, myself, and Mr. Wolfe. I forgot where I was. Mr. Neely indicated that he had a lease on another farm, and I think he asked Mr. Wolfe if we had taken that into account on our measurements, and I don't recall what the answer was. And we left shortly after that with our computations.

Q. Did you ever tell him what the results of your computations were? [51]

(Testimony of H. L. Mathis.)

A. No, sir, I did not.

Q. You say you did not, or you don't recall.

A. Well, I will say I don't recall.

Q. At this time I will hand you several documents withdrawn from Government's Exhibit 12 for identification, and these exhibits are marked 12-A through 12-F.

I will ask you to look them over, please. Have you had an opportunity to do that?

A. Yes, sir.

Q. What is 12-A for identification?

A. It is Form ACP-201, or Request that the Government Share Costs of Conservation Practice on this farm.

Q. What does ACP stand for?

A. Agricultural Conservation Program.

Q. Without going into elaborate detail, what is that?

A. It is a request submitted to the County Committee by Mr. Neely for leveling on 160 acres, and ditch lining of 150 cubic yards.

Q. Generally, without reference to the document, what is this ACP program.

A. What is the ACP program?

Q. Yes.

A. It is a program that the Government instituted for the Federal Government to share costs of needed conservation, such as land leveling, concrete ditches, or any improvement to the farm. [52]

Q. Such things as saving water generally?

A. Yes, sir.

(Testimony of H. L. Mathis.)

Q. Assisting in making land fertile?

A. Fertile. Yes.

Q. All right, 12-A is a Request for such practice?
A. Yes, sir.

Q. What is 12-B?

A. 12-B is ACP Form 247, which is prepared after 201 is approved by the County Committee.

Q. Before we get too far on 12-A, do we have a purported signature of the operator?

A. Yes, sir, we do.

Q. What is that? A. Rex L. Neely.

Q. And do we have a purported signature of a Committeeman approving it?

A. Yes, sir, we do. R. B. Elsberry.

Q. Going from 12-A, which is 201 you described, to 12-B for identification.

A. This is ACP Form 247, which is a practice that is, if tentatively approved by the County Committee, submitted to the Soil Conservation Service.

Q. How does the Soil Conservation Service get into this?

A. Any job like land leveling, or concrete ditches [53] come under the supervision of the Soil Conservation Service to make sure that the practice is installed and maintained by good government practices.

Q. And with regard to this 12-B for identification, what are the two categories that are carried on the form?

A. There is a Statement of Need, and a Report of Performance.

(Testimony of H. L. Mathis.)

Q. Now, 12-B for identification, that covers which of those categories?

A. This covers the needs.

Q. Then does it describe the item that is to be done, the practice to be followed?

A. Yes, sir, in this case it is land leveling.

Q. Now, what is 12-C for identification?

A. 12-C is Form ACP-245, or copy of it, to show the extent performed, and the amount of money that is earned by performance of this practice.

Q. All right. Does that bear a signature?

A. Yes, sir. It is approved by Joe L. Short.

Q. You are familiar with Mr. Short's signature from your experience there?

A. Yes, sir.

Q. And is that his signature?

A. Yes, sir, I would say it is.

Q. Now, with regard to the next document, [54] which is 12-D for identification, what is that document?

A. This again is a copy of the ACP Form 247, a statement of Need, and a Report of Performance, and in this case it is for concrete ditch lining.

Q. Does it have a purported signature on it?

A. Yes, sir. Donald F. Rankin. Rankin?

Q. Are you having some difficulty deciphering it?

A. Well, I assume this last name is Rankin. I don't know what the first name is.

Q. All right. Now, the next document is Government's Exhibit 12-E for identification. What is that?

(Testimony of H. L. Mathis.)

A. This is another copy of the Form 247, with the Report of Performance on this form.

Q. On 12-D for identification, which you have identified previously, which of the categories does it deal with?

A. This deals with the needs of this particular farm for concrete ditch lining.

Q. And what is 12-E dealing with, then?

A. This is the actual report of performance, or what was done on this farm.

Q. Now, finally we have 12-F. What is that?

A. This is the final form of ACP-245, or the form that the computation is computed on, and the money is paid from ACP to this farm.

Q. What farm is this covering? [55]

A. This is Farm 647.

Q. Does it bear a purported signature?

A. Yes, sir, it does.

Q. What signature? A. Rex L. Neely.

Q. All right. And it deals with what farm?

A. Farm 647.

Q. Now, the County Office itself does not pay for these agricultural practices, does it?

A. No, sir, they do not.

Q. How is payment secured?

A. We transmit a block of 245's, or a payment statement as they become due, and they are mailed from San Francisco, the checks are mailed from San Francisco.

Q. One of the disbursing offices, then?

A. One of the disbursing offices, yes.

(Testimony of H. L. Mathis.)

Q. I will hand you what has been marked Government's Exhibit 10 for identification, and call your attention to the first group of three documents as part of that. A. Yes, sir.

Q. What are those documents?

A. These are forms ACP-210 and 212, which are transmittal sheets that we use to report the amount of payment due to these producers.

Q. And these are transmitted to this disbursing person who eventually pays it? [56]

A. Yes, sir.

Q. And as part of those vouchered for payment, is there anything with regard to this Farm 647?

A. Yes, sir, there is. There is an entry for Farm 647, Rex L. Neely, 699 North Washington Street, Chandler, for \$1500.

Q. Thank you. I might ask you one more item on Government's Exhibit 10. These numerals which are down here at the very bottom of the third page on this exhibit, Government's Exhibit 10 for identification, what are those?

A. Those are the numbers on the checks that are issued.

Q. And from what source do you get those?

A. They are on this transmittal form when they are returned to us.

Q. So the disbursing officer then puts those on?

A. Yes, sir.

Q. And sends you back a form showing a payment of this amount? A. Yes, sir.

Mr. Holohan: At this time the Government of-

(Testimony of H. L. Mathis.)

fers in evidence Government's Exhibit 10 for identification as Government's Exhibit 10.

Mr. Stanfield: No objection.

Mr. Holohan: As I understand it you have no objection? [57]

Mr. Whitney: No, we have no objection. They are Government records.

The Court: It may be received.

(Said documents were received in evidence and marked as Government's Exhibit 10.)

Mr. Holohan: You may cross examine the witness.

Cross Examination

Q. (By Mr. Stanfield): Mr. Mathis, you stated earlier, I believe, that you started your employment with the Pinal County ASC Office in May of 1955, is that right? A. That is right.

Q. And you left their employ in September, no, in January of 1957, is that correct?

A. No, September 1st, 1957.

Q. September, 1957. May I ask how you happened to end your employment? A. I quit.

Q. Bear with me just one minute.

I asked Mr. Davis, the current Office Manager, some questions a few minutes ago about the programs that were handled by the office, and he wasn't informed on the 1954, 1955, and '56. [58]

You are familiar with what the programs for 1955 and 1956 were, and I suppose in 1957?

A. Yes, sir.

Q. Would you tell us what those various pro-

(Testimony of H. L. Mathis.)

grams that were handled by the ASC Office were in those years?

A. There was the Commodity Credit Loan Program, Administrative Program, the Cotton Program, the Wool Program, ACP Program, and Emergency Feed Program.

Q. When you became Office Manager in January, 1957, you were placed in charge of all these programs directly, weren't you? A. Yes, sir.

Q. And, in fact, the main responsibility for the entire operation of the office of the various programs falls upon the office manager, which was you at that time?

A. Yes, sir, that is right.

Q. And you had occasion during that period of time to prepare a budget for the office for the fiscal year in which it was coming up, did you not?

A. Yes, sir, I did.

Q. Do you have any recollection of what that budget figure was?

A. Somewhere around 43,000, I believe it was.

Q. You had about four regular employees then, did you? A. Yes, sir, four. [59]

Q. And from this \$43,000, you were required to pay your own salary, and the salaries of the other people that worked in the office, office rent and utilities, and whatnot, and the various sundry allowances to the Committeemen, that all came out of that figure? A. Yes, sir.

Q. Did you have occasion to examine the status

(Testimony of H. L. Mathis.)

of the various accounts at the office when you took over as Office Manager?

A. You mean the various programs?

Q. Yes.

A. Yes, sir. They were gone over by the State Office Auditing Department on the 1st of January.

Q. And were you informed as to their condition, or did you subsequently learn it?

A. Yes, sir, I was forwarded a letter after the audit was made.

Q. And what was the condition of these programs?

A. Well, all programs were in good shape except the Cotton Program. There was some exceptions to the Cotton Program in 1956, the latter part of 1956.

Q. Do you know if that was in connection with these proceedings, or something else?

A. I don't know.

Q. You were there as a clerk, I believe, between May of [60] 1955, and January of 1957, when Mr. Short was the Office Manager, isn't that right?

A. Yes, sir, that is right.

Q. And he handled all of these programs during that period of time, did he not, the wool, and so forth?

A. He was responsible for all the programs.

Q. And the cotton allotments program was actually reinstated from the condition in 1950, beginning in 1953, and it was in full sway when you were there in 1955, that is correct, isn't it?

(Testimony of H. L. Mathis.)

A. Yes, sir.

Q. You had considerable experience with the cotton allotment program yourself as Manager, did you not? A. Yes, sir, I did.

Q. As to the effect. What was your experience with the program?

A. I don't quite follow you.

Q. Let me ask you this question. You said earlier that you quit your employment of September of 1957? A. Yes, sir.

Q. Was the reason for your leaving there related to the program there, and the office conditions? A. Partly, yes, sir.

Q. Describe what that part of that situation was that affected your terminating your employment.

Mr. Holohan: I object to that as being immaterial.

The Court: Sustained. We will have our afternoon recess. Keep in mind the Court's admonition.

(Recess.)

The Court: You may continue.

Q. (By Mr. Stanfield): Mr. Mathis, calling your attention again to September of 1956, you stated earlier that you had gone out to the hospital to see Mr. Short, that is correct, isn't it?

A. Yes, sir.

Q. When you arrived there at the hospital, you found Mr. Short in a sort of a paralytic condition, did you not? A. Yes, I did.

Q. And, as a matter of fact, his ability to speak

(Testimony of H. L. Mathis.)

was so impaired that you couldn't understand him, isn't that correct?

A. At the time I was there, Mr. Short couldn't speak at all.

Q. And when you were there, isn't it possible you were mistaken before, and that his wife was there with him at that time when you had this conversation? A. It could very possibly be.

Q. And isn't it a fact that you knew, or that you did know that at the time he was struck down with this illness, he had been out checking some farms that he knew were overplanted? [62]

A. No, sir, I don't know what Mr. Short was doing. It happened on a week-end.

Q. Isn't it a fact that when you were there at the hospital, that one way or the other he inquired of you as to whether or not everyone was okay, and had plowed up their cotton, the ones that were overplanted?

A. That I can't remember that far back. I know our interview was very short.

Q. In other words, it is possible because of your failure to recall clearly, that rather than your inquiring of him, he actually inquired of you, since you were about to issue the Soil Bank checks and the Marketing Cards, that that might have been the way it was?

A. It could very easily be. I know there was two specific cases I went out to check with Mr. Short on.

Q. The point being here he inquired of you if

(Testimony of H. L. Mathis.)

they were in compliance at that time, is that not correct?

A. Like I say, that could probably be.

Q. You stated earlier that you had located a Form 578 for the year 1956 for Mr. Neely in Mr. Short's desk, in the office?

A. Yes, sir.

Q. Rather than in its folder?

A. That is right.

Q. As a matter of fact, this was only one of a number of [63] 578 forms that were in Mr. Short's desk?

A. There were other 578's in the desk, yes.

Q. And there was nothing unusual at all about the 578 form being in his desk?

A. Nothing unusual about it, no, sir.

Mr. Stanfield: I would like to ask this witness some questions later on. But that is all at this time.

Cross Examination

Q. (By Mr. Whitney): Mr. Mathis, referring to the Government's Exhibit 11-D for identification, this is headed Report of 1956 Acreage of Farm Number 647?

A. Yes, sir.

Q. Now, when did you first see that?

A. I don't recall the exact date. It was some-time in the fall of 1956.

Q. And do you remember, or do you know whose handwriting that is?

A. No, sir, I don't.

Q. Would you turn to the back. Do you know that either?

(Testimony of H. L. Mathis.)

A. Well, the signature of the computer is Dorothy Pryor.

Q. And that is some lady that worked there in the office?

A. Yes, sir, she was an employee of the office.

Q. Either a clerk or a stenographer? [64]

A. Well, she was hired strictly for the computation of cotton for the summer.

Q. And you believed that she made out this Government's Exhibit 11-D for identification?

A. She signed it.

Q. I see. Where is her signature up there, Dorothy Pryor? A. In the left-hand column.

Q. Do you know whether those are her figures or not? I assume it is?

A. I would assume it is, yes, sir.

Q. She is the one that computed the acreage?

A. Yes, sir, I would say so.

Q. Now, where did you first see this?

A. It was in Mr. Short's desk drawer.

Q. Along with, as you stated to Mr. Stanfield, along with a lot of other 578's? A. Yes, sir.

Q. Involving other farms than 647?

A. Yes, sir.

Q. When you got that, were all those figures on there? A. Yes, sir.

Q. They were all on?

A. They were all on there, yes, sir. [65]

Q. You say that signature there, R. L. Neely, 10/3/56, that would be October 3rd, 1956, did you see Mr. Neely sign that?

(Testimony of H. L. Mathis.)

A. No, sir, I did not.

Q. Do you know, or have you any way of telling who issued Mr. Neely the marketing card for the 1956 cotton? A. No, sir.

Q. Well, this document here shows Final Acres 477.7. That means the final acres in cotton?

A. Yes, sir.

Q. And do you know what his allotment was that year? A. Not off hand.

Q. Well, what would you have to look at in these documents to determine that?

A. Well, the listing sheet would be the one.

Q. (Handing document to witness.) The Listing Sheet is Government's Exhibit 3 admitted in evidence, the 1956 official Listing Sheet. Tell me what his allotment was, please.

A. It was 306.7 acres.

Q. 306.7. Okay. Referring to Government's Exhibit 10-E and 10-F, that was for the 1956 Notice of Farm Acreage Allotment.

Mr. Holohan: Mr. Whitney, is that 10 or 11?

Mr. Whitney: This is 11-F, I think it is.

Mr. Holohan: Yes. [66]

Mr. Whitney: I beg your pardon.

Q. (By Mr. Whitney): That shows 306.7?

A. Yes, sir.

Q. Signed by Mr. J. E. Beggs?

A. Yes, sir.

Q. Who was Mr. Beggs?

A. He was chairman of the Pinal County Committee that year.

(Testimony of H. L. Mathis.)

Q. That is dated December 1st, it says 1955, doesn't it? A. Yes, sir.

Q. But that was really for the 1956 cotton?

A. Yes, sir, for the 1956 year.

Q. All right, turning to Government's Exhibit 11-E for identification, that also shows an allotment of 367.7 acres? A. Yes, sir.

Q. And that is signed by Mr. Henry D. Haley?

A. Yes, sir.

Q. December 1st, 1956? A. Yes, sir.

Q. Who was Mr. Haley?

A. He was a member of the Pinal County Committee in that year.

Q. Again referring to Government's Exhibit 11-D for identification, do you remember—I will withdraw that. That I notice is not signed by anyone? [67] A. No, sir.

Q. That should be signed by whom?

A. The signature of the man who measured the farm originally should be entered here.

Q. Do you know what that "X" is down there for, or is that probably for his signature?

A. I have no idea.

Q. You wouldn't know. And you don't know who issued the Marketing Card?

A. No, sir, I don't.

Mr. Whitney: I ask the Government to produce the marketing card for 1956 on Long Staple.

Mr. Hays: On Long Staple or Short?

Mr. Whitney: I mean on Short Staple. I beg your pardon.

(Testimony of H. L. Mathis.)

Would you mark this for identification, please. This is the card I presume that the Government Agent picked up from Mr. Neely.

Mr. Hays: That is correct.

The Clerk: Defendant's Exhibit E for identification.

(Said card was marked for identification as Defendant's Exhibit E.)

Q. (By Mr. Whitney): Referring to Defendant's Exhibit E for identification, I will ask you if that doesn't refresh your memory about the Marketing Card for 1956, Upland Cotton, or rather [68] Short Staple?

A. Yes, sir, the card was issued by Pauline Golsten.

Q. Is that your signature or hers?

A. No, my signature was written in by Mrs. Golsten.

Q. She had authority to do that, I assume?

A. Yes, sir, she did.

Q. And it is also signed by Mr. Neely here?

A. Yes, sir.

Q. Would you explain to me why, if he only had an allotment of 306.7, or 367 as one of those says, and this shows he had planted cotton of 477.7 there on the same day that this 11-D, Government's Exhibit 11-D was signed, that this would issue, showing him eligible for CCC Loan?

A. Mrs. Golsten came to my office and informed me Mr. Neely was in, and would like to pick up

(Testimony of H. L. Mathis.)

his card. And his 578 still showed there was no destroyed cotton, and what should she do.

I told her due to my conversation with Mr. Short, that I was under the impression that Mr. Neely was all right, and for her to go ahead and issue the card.

Q. Go ahead and issue the card?

A. Yes, sir.

Q. And that has been done in many instances, down there, hasn't it, other than Mr. Neely?

A. You mean where? [69]

Q. Where there has been overplanting and no destruction of cotton, where they have gotten a Marketing Card, other farmers?

A. It was done in some other cases, yes, sir.

Q. Now, Mr. Mathis, what did you call, or what is being called down there, or was called the Control Register, if you know?

A. The Control Register?

Q. Yes.

A. It is a sheet that we made up at the first of the year to show the farm number, the man's allotment, the date that the various notices of overplant were sent out, the amount of destruction on the farm, and the date that the compliance notice was sent out.

Q. Do you know whether or not Mr. Neely ever received a notice of overplant?

A. No, sir, I don't know.

Q. Could you tell from the Control Register whether he did or not?

A. Probably.

(Testimony of H. L. Mathis.)

Q. Take 1956.

A. No, sir. According to this, he was never notified.

Q. Never notified. Was he ever notified, according to the records, or according to your knowledge, of the amount of overplant and penalty due the Government? [70]

A. To my knowledge, no, sir.

Q. Do you know, Mr. Mathis, whether the penalties were ever figured up on the 1956 overplant?

A. Yes, sir, they were.

Q. By whom?

A. Mr. Wolfe and myself figured them.

Q. Were they ever sent to Mr. Neely?

A. No, sir, they were not.

Q. And that would be the amount of the overplant, plus about—what did they tax, 17 cents a pound?

A. 17½ cents a pound in that year.

Q. That was never sent to Mr. Neely after it was made up? A. No, sir.

Q. Why wasn't it sent to him?

A. My instructions came from the State Office to hold it up on the mailing.

Q. Hold it up? A. Yes, sir.

Q. In other words, did Mr. Neely ever ask you about the penalty?

A. Mr. Neely called me one day at the office, and the only thing I could tell him was that the notice was being held up.

Q. That the notice was being held up?

(Testimony of H. L. Mathis.)

A. Yes, sir. [71]

Q. He indicated he would have paid the penalty?
A. We didn't get into it that far.

Q. You just told him the notice was not going to be sent out?
A. Yes, sir.

Q. Do you know of other cases in the records you have identified there where there has been overplant by other farmers?

A. Well, in 1956 probably 85 percent of the farmers in the county overplanted their original allotments.

Q. And many of them didn't destroy their cotton, the excess?

A. You mean did they pay the penalty, or—you lost me there.

Q. Or destroy it?

A. They would have to do one of the two.

Q. Were some of them issued Marketing Cards?

A. Well,—

Q. Without either paying the penalty, or showing them eligible for the loan?
A. Yes, sir.

Q. How many do you know of in that county?

A. I know of two.

Q. Do you remember who they were?

A. Yes, sir, Mr. Beggs, and Mr. Haley. [72]

Q. Who was Mr. Beggs?

A. He was Chairman of the Pinal County Committee in this particular year.

Q. Who is Mr. Haley?

A. He was a member of the County Committee.

Q. They both were in that situation?

(Testimony of H. L. Mathis.)

A. Yes, sir.

Q. So it was common practice down there to overplant? A. Yes, sir.

Q. With reference to this control register, or what you have in your hand there, what they call the Control Register, which I will identify as Defendant's Exhibits A and B for identification, if I can find the A.

That came off. A and B for identification. What were they used for?

A. They were a record that we kept for our own use in the office, to show the status in the county, how many farms had been measured, how many farms had been plowed up and were in compliance, and how many were to be in compliance.

Q. It was not an official record, but something you used? A. That is right.

Q. It was in use before you got there?

A. Yes, sir.

Q. I see. You know of a farm 595?

A. Yes, sir. [73]

Q. How long has that been on the books?

A. 595?

Q. Yes.

A. I don't know. It was on the books in 1955.

Q. Was it on the books before then?

A. I don't know.

Q. You don't know as a fact, then, that it might have been on the books since 1950?

A. Well, it wouldn't have been on the books. There was no allotments in 1951, '52, and '53.

(Testimony of H. L. Mathis.)

Q. Were you connected with the Agricultural Stabilization and Conservation Committee in Pinal County on October 11, 1957? A. Of 1957?

Q. Yes. A. No, sir.

Q. When did you leave there?

A. September first, 1957.

Q. You are acquainted with the forms MQ-98 and MQ-92 (handing items to witness)?

A. MQ-92, yes, sir.

Q. What was the purpose of sending those forms out?

A. These forms are used to determine the normal yield, or the normal production for a farmer that has overplanted, in the process of paying his penalty, so that a penalty can be assessed. [74]

Q. Are you acquainted with the signature of Mr. Rodney Ellsberry? A. Yes, sir.

Q. Chairman of the Committee?

A. Yes, sir.

Q. Was he Chairman when you were down there? A. He was in 1957, yes, sir.

Q. Is that his signature? A. Yes, sir.

Mr. Whitney: I would like to have this marked as one exhibit, please.

The Clerk: Defendant's Exhibit F for identification.

(Said letter was marked as Defendant's Exhibit F for identification.)

Q. (By Mr. Whitney): This letter dated October 11, 1957, from Mr. Ellsberry to Mr. Neely, with these forms attached, appear to be what we have

(Testimony of H. L. Mathis.)

been discussing, that is to say Form MQ-98, and MQ-92, I believe.

That is Mr. Ellsberry's letter?

A. Yes.

Q. Defendant's Exhibit F for identification?

A. Yes.

Mr. Whitney: I think that is all. [75]

Redirect Examination

Q. (By Mr. Holohan): Counsel has made reference to a farmer overplanting his allotment.

Is this anything unusual or even contrary to the regulations at the beginning of the season to overplant your allotment?

A. No, sir, it is not.

Q. After the crop has grown to a suitable size, what takes place at the direction of the County Committee with regard to measurement of the farms?

A. Well, a crew is sent out to measure the various fields of cotton, and report the amount of acreage that is found on each individual farm in the County, and then if the man is overplanted, a notice of overplant is mailed to him, or if he is underplanted, or within his allotment, a notice of compliance is sent to him.

Q. Now, were any entries made on the 578 to reflect the conclusions on the measurements?

A. On the original measurement, yes, sir.

Q. On the original measurements, that would be

(Testimony of H. L. Mathis.)

the actual physical measurement of the farmer's allotted crop? A. Yes, sir.

Q. For instance, on Government's Exhibit 11-D, which you have identified as the 578 for Short Staple Cotton, for [76] Farm 647, for the year 1956, does it show that the farm was actually measured, and the results of such measurement?

A. Yes, sir.

Q. All right. On the reverse side of this, the actual computations that are made by someone, presumably, according to the document, Dorothy Pryor? A. Yes, sir.

Q. Now, in the Column G, Final Acres, is that then the final result?

A. Yes, sir. That is after the deductions, or——

Q. What is——

A. I was just going into the deductions.

Q. Excuse me. Go ahead.

A. If it is 4-4, or plant 4 and skip 12, whatever it would be, this would reflect the final acreage after it was computed.

Q. What does 4-4 mean?

A. It means plant 4, then 4 rows of idle, 4 rows cotton, 4 rows idle land.

Q. So-called skip-row planting, which the farmers have developed, a farm practice there for increase in additional yield? A. Yes, sir.

Q. Now, when a farmer plants a 4-4, then he is not charged with the gross acreage, then? [77]

A. No, he is charged with actual cut.

(Testimony of H. L. Mathis.)

Q. Then you have on the document in this case an example of 4-4 plant? A. Yes, sir.

Q. The gross measurements would be 73 acres?

A. That is right.

Q. Then it was a 4-4 plant, so there is an adjustment for that? A. Yes.

Q. It is approximately half, isn't it?

A. It is half.

Q. Is there another example of 4-4 plant?

A. Yes, sir.

Q. And another field designated there?

A. Yes, sir.

Q. This information is placed on the 578?

A. Yes, sir.

Q. Which we have referred to as Government's Exhibit 11-D for identification.

Thereafter this document is also, if there is showing a planting in excess of allotment, it is also according to the regulations supposed to show, to show the destruction, is it not? A. Yes, sir.

Q. If it doesn't show the destruction, then there [78] are other steps taken with respect to assessment of penalties, and so forth? A. Yes, sir.

Q. Now, in the instances that counsel spoke of where the two that you have knowledge of, in the case of Mr. Beggs and Mr. Haley having gotten their Marketing Card when they were overplanted, in the case of Mr. Beggs, from your knowledge and recollection, his 578 showed actual destroyed acreage to bring him into compliance, did it not?

A. Yes, sir, I believe it did.

(Testimony of H. L. Mathis.)

Q. Now, on your control register here, could this be described as really a type of work sheet?

A. Yes, sir, it could.

Q. There are instances when the so-called Control Register was not kept up to date, isn't that correct?

A. Yes, sir.

Q. It was not required by any regulations issued by the Department of Agriculture?

A. No, sir.

Q. It was solely an office practice?

A. That is right.

Q. Was that instituted by the Defendant Short, or do you know?

A. I don't really know.

Q. When you arrived on the scene, they were keeping some [79] sort of a work sheet here, this Control Register?

A. Yes, sir.

Q. Prior to your visit to the Defendant in the hospital on this occasion that you have previously testified to, as I understand your answer to one of the counsel for the Defendant's questions, you had two specific cases in mind.

What were the two specific cases?

A. One was Mr. Haley, and one was Mr. Neely's case.

Q. You had discovered the 578 here which you have identified as Government's Exhibit D?

A. Yes, sir.

Q. And then this inquiry was made by you of the Defendant Short?

A. Yes, sir.

Q. Prior to issuing a Marketing Card to the

(Testimony of H. L. Mathis.)

Defendant Neely you were contacted by Miss Golsten?
A. That is right.

Q. With regard to Government's Exhibit 7 for identification, which you have identified as the Marketing Card Register, would you turn to the entry with regard to 647, the Farm 647?

Now, have you found that entry here?

A. Yes.

Q. All right. In addition to the Farm No. 647, is there any designation of the Marketing Card Number?

A. Yes, sir, there is. Do you want the number?

Q. I will hand you Government's Exhibit [80] E for identification, and would you compare those?

Mr. Whitney: You mean Defendant's Exhibit E.

Mr. Holohan: Excuse me. Defendant's Exhibit E for identification.

Q. (By Mr. Holohan): Is it the same number as the Marketing Card Register shows being issued?

A. Yes, sir, it is.

Q. The actual writing on Government's Exhibit, or Defendant's Exhibit E was by Mrs. Golsten?

A. Yes, sir.

Mr. Holohan: At this time, we will offer the Marketing Card Register, Government's Exhibit 7 for identification, in evidence as Government's Exhibit 7.

Mr. Stanfield: No objection.

Mr. Whitney: No objection.

The Court: It may be received.

The Clerk: Government's Exhibit 7 in evidence.

(Testimony of H. L. Mathis.)

(Said Marketing Card Register was received in evidence and marked as Government's Exhibit 7.)

Q. (By Mr. Holohan): Now, with regard to Government's Exhibits E and F, or Defendant's Exhibits E and F, I believe they are exhibits you hold in your hand, are they not?

A. Yes, sir.

Q. Having gone over this matter with Mr. Whitney, and [81] seen these other documents, does that now refresh your memory as to who prepared the notice which is marked Government's Exhibit 11-E, I believe?

A. This 11-E was prepared by myself.

Q. You prepared Government's Exhibit 11-E?

A. Yes, sir.

Q. And why did you prepare it?

A. Prepared it on Mr. Short's instructions.

Q. That is the Defendant Short here?

A. Yes, sir.

Q. All right.

A. The circumstances, I don't know. He asked me to prepare this notice. He had it. It was signed by Mr. Haley. I typed it up and placed it in the man's Farm Folder.

Q. Did Mr. Haley sign it after it was typed up, or before? A. It was signed before.

Q. Was that not uncommon for the County Committeemen to sign certain documents in blank for action by the office down there?

A. No, sir. It was done.

(Testimony of H. L. Mathis.)

Q. It was done?

A. To speed the operation.

Q. In this particular instance, Government's Exhibit 11-E for identification was such an instance? The Committeeman Henry B. Haley had signed it in blank, and you were directed then by [82] the Defendant Short to prepare the document?

A. Yes, sir, that is correct.

Q. From what source did you get the figure for the allotment?

A. Mr. Short gave me the figure of 367.7.

Q. And it was dated as of December 1st, 1956?

A. Yes, sir.

Q. Is that about the date that you prepared it?

A. No.

Q. When did you prepare it?

A. I would say it was prepared sometime in November.

Q. Of what year? A. Of 1956.

Mr. Holohan: At this time the Government offers in evidence Government's Exhibit 11-E for identification as Government's Exhibit 11-E.

Mr. Whitney: Is that the one that shows——

Mr. Holohan: That is the one that shows this figure. (Handing to counsel.)

Mr. Whitney: No objection to 11-E.

Mr. Holohan: We will also offer in evidence Government's Exhibit 11-F for identification as Government's Exhibit 11-F.

Mr. Whitney: No objection to 11-F as far as Mr. Neely is concerned. [83]

(Testimony of H. L. Mathis.)

Mr. Stanfield: No objection to 11-E.

The Court: It may be received.

Mr. Stanfield: No objection to 11-F.

Mr. Holohan: May 11-F be received?

The Court: It may be.

The Clerk: Government's Exhibits 11-E and 11-F in evidence.

(Said documents were received in evidence and marked as Government's Exhibits 11-E and 11-F.)

Q. (By Mr. Holohan): Government's Exhibit 11-F in evidence is the original Allotment Notice dated December 1st, 1955? A. Yes, sir.

Q. That is for the crop year 1956?

A. That is right.

Q. And this 11-E was the one you were directed to issue later on? A. Later on, yes, sir.

Q. This was issued, as you recall, sometime in December, 1956?

A. November, sometime in November.

Q. Or November. What happened to the white sheet that is part of 11-E?

A. That I don't know.

Q. You did not cause it to be mailed out? [84]

A. No, sir, I don't think so.

Q. Now, at the time that you found these 578's in the Defendant's drawer, I take it that is the drawer down there at the office, his regular desk drawer down at the Pinal County Office?

A. Yes, sir.

(Testimony of H. L. Mathis.)

Q. Besides Government's Exhibit 11-D, how many other 578's were there?

A. I don't recall off-hand. There were maybe a dozen.

Q. About 12? A. I would say.

Q. All right. And roughly how many farms do you cover by the office down there in the cotton program?

A. Somewhere around 900 to 1000.

Q. Normally these 578's are part of the Farm Folder which you have identified earlier today?

A. That is right.

Mr. Holohan: That is all on redirect, your Honor.

Recross Examination

Q. (By Mr. Whitney): Mr. Mathis, do you know why those 578's were in that desk, these form 578's, why they were in the desk?

A. Do I know why they were in the desk?

Q. Yes. [85]

A. No, sir.

Q. When you were manager down there, and you wanted to discuss a matter with a farmer in connection with that, did you put anything in the desk to remind you of it? A. Yes, sir.

Q. And Mr. Short may have put that in his desk for the same purpose?

Mr. Holohan: I object to that as speculation.

The Court: Yes, sustained.

Q. (By Mr. Whitney): Now, the United States

(Testimony of H. L. Mathis.)

Attorney asked you with reference to the Mr. Beggs and Mr. Haley overplanting.

You testified here, I believe, in cause Number 14,380, United States of America versus John E. Beggs, is that right?

A. Yes, sir, I testified.

Q. And at that time didn't you pick out several farms that were overplanted out of the control register?

A. On the control register, yes, sir.

Q. And it shows that there was overplanting and no cotton destroyed.

A. That's what it shows on the control register, yes, sir.

Q. And they still got their Marketing Cards?

A. Yes, sir.

Mr. Whitney: That is all. [86]

Redirect Examination

Q. (By Mr. Holohan): You were not asked whether the 578's of the particular farm actually showed compliance, and whether or not they were in compliance, but what the work sheets showed?

A. That is right.

Q. Also on the penalty matter, which I overlooked for the moment, you were instructed by the State Office to hold off the assessment of penalty?

A. That is right.

Q. You knew of the existence of a criminal case against the Defendant, didn't you?

A. Yes, sir, we did.

(Testimony of H. L. Mathis.)

Q. You testified in the grand jury hearing in January of 1957? A. That is right.

Q. And the State Office also knew of such existence? A. That is right.

Q. Was there any mention in your instructions about the fact of the pendency of a criminal case?

A. I don't really remember. I think it was something to the effect that until litigation was straightened out in this matter, to withhold the penalty statement from Mr. Neely.

Q. What was the computation? What was the amount of penalty? [87]

A. I don't remember now. Somewhere in the neighborhood of 32, 33 thousand, I believe. .

Q. It was what?

A. Somewhere around 30 thousand, I believe.

Mr. Holohan: That is all.

Mr. Stanfield: No questions at this time.

Mr. Whitney: That is all, but we don't care about releasing Mr. Mathis.

The Court: All right. That is all.

(Witness excused.)

Mr. Hays: I will call Elizabeth Treadway Outlaw.

ELIZABETH TREADWAY OUTLAW
called as a witness in behalf of the Government,
having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Hays): Will you state your name, please?

(Testimony of Elizabeth Treadway Outlaw.)

A. Elizabeth Treadway Outlaw.

Q. You were formerly Elizabeth Treadway, is that correct?

A. Yes, sir.

Q. Have you been recently married?

A. Yes, sir.

Q. How recently? [88]

A. Last June is a year ago.

Q. Where do you live, Mrs. Outlaw?

A. I live in a little place called Mira Loma, out about 20 miles from San Bernardino.

Q. That is California?

A. California.

Q. You formerly lived in Arizona, in the Phoenix area, is that correct?

A. Yes, sir.

Mr. Hays: Will you mark these for identification, please.

The Clerk: Government's Exhibits 13-A, 13-B, and 13-C for identification.

(Said documents were marked as Government's Exhibits 13-A, 13-B, and 13-C for identification.)

Q. (By Mr. Hays): Mrs. Outlaw, in the years past, did your family own some property down in Pinal County?

A. Yes, sir.

Q. I will hand you Government's Exhibit 13-C for identification, and ask you to look at that.

A. Well, I can't remember the land very well, but I am sure that is correct.

Q. This was a patent, is that correct?

A. Yes, sir.

Q. And in there a Charles Treadway is mentioned, is that correct?

A. Yes, sir. [89]

(Testimony of Elizabeth Treadway Outlaw.)

Q. And who is that Charles Treadway?

A. That is my ex-husband.

Q. He was your husband, is that correct?

A. That was my husband, yes, sir.

Q. I hand you Government's Exhibit 13-B for identification, and what is that?

A. Warranty Deed.

Q. A Warranty Deed? A. Yes, sir.

Q. In there an Elizabeth Treadway and an Earl Treadway, or, rather, a Charles Treadway and Elizabeth Treadway convey to an Earl Treadway.

A. That is right.

Q. Is that correct? A. That is correct.

Q. I hand you Government's Exhibit 13-A for identification, and what is that?

A. Warranty Deed.

Q. And in that deed an Earl Treadway conveys to Elizabeth Treadway, is that correct?

A. That is right.

Q. Is that Elizabeth Treadway you?

A. Yes, sir. [90]

Q. And what description does that cover? Can you read the description?

Mr. Whitney: It speaks for itself.

A. (By the Witness): Lot 3 and 4. That is the same.

Q. (By Mr. Hays): And these all cover the same property, is that correct?

A. That is right.

Mr. Hays: At this time we will offer in evidence Government's Exhibits 13-A, B, and C.

(Testimony of Elizabeth Treadway Outlaw.)

Mr. Whitney: If the Court pleases, on those exhibits 13-A, 13-B, and 13-C, the Defendant Neely objects to them on the grounds there is no foundation for their introduction. They are incompetent, irrelevant, and immaterial as far as this case is concerned.

In other words, they are not binding on the Defendant Neely.

Mr. Stanfield: We make the same objection.

The Court: Objection overruled.

The Clerk: Government's Exhibits 13-A, 13-B, and 13-C in evidence.

(Said documents were received in evidence as Government's Exhibits 13-A, 13-B, and 13-C, respectively.)

Q. (By Mr. Hays): Mrs. Outlaw, referring to the land described in Government's Exhibits 13-A, 13-B, and 13-C, those deeds I showed you. [91]

A. Yes, sir.

Q. Was that land ever farmed?

A. Well, there was 80 of it farmed one year.

Q. And what year was that?

A. That's what I can't say, but it must have been in 1947 or 8.

Q. Has it been farmed since 1950?

A. No, sir.

Q. What state is the land in?

A. It has gone back to desert.

Q. It has gone back to desert? A. Yes, sir.

Q. Do you know the defendant Joe Short?

A. No, sir.

(Testimony of Elizabeth Treadway Outlaw.)

Q. Do you know the defendant Rex Neely?

A. No, sir.

Q. Do you know a W. R. Burns?

A. No, sir.

Q. Has that property been under lease since 1950?

A. No, sir.

Q. It hasn't?

A. No, sir. To my knowledge, it hasn't.

Mr. Whitney: I beg your pardon?

The Witness: To my knowledge, it has not.

Mr. Hays: That is all, your witness. [92]

Mr. Whitney: I have no questions on behalf of Neely.

Mr. Stanfield: No questions.

Mr. Hays: That is all, thank you. May this witness be excused, please?

Mr. Whitney: Oh, yes.

Mr. Hays: You are excused, and you may leave.

(Witness excused.)

Mr. Hays: Mr. Wolfe.

RAY WOLFE

called as a witness in behalf of the Government,
having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Hays): State your name, please.

A. Ray Wolfe.

Q. Where do you live? A. Youngstown.

Q. And by whom are you employed?

(Testimony of Ray Wolfe.)

A. Youngstown Land and Development Company.

Q. By whom were you employed in 1956?

A. The United States Department of Agriculture. [93]

Q. And in what capacity?

A. I was the farmer field man for the southern part of the state, out of the State Office. State Office Representative.

Q. In simpler language, what was your job?

A. Well, I was responsible for the over-all administration of the various programs assigned to the counties that were in my district.

Q. And you worked out of the State Office?

A. That is right.

Q. Had you been employed previously by the Department of Agriculture? A. Yes.

Q. In what capacities?

A. As a clerk in the County Office, to begin with. Later County Office Manager, and then finally the position I just mentioned.

Q. Do you know the Defendant Short?

A. Yes, I do.

Q. Do you know the Defendant Neely?

A. Yes.

Q. Did you have occasion to visit the Defendant Neely's Pinal County farm in 1956?

A. Yes, I did.

Q. About when was that? [94]

A. I believe it was the latter part of December.

(Testimony of Ray Wolfe.)

Q. Who was present at that time when you visited the farm, if anybody?

A. Who was present with me?

Q. Yes. A. H. L. Mathis.

Q. What was the purpose of your visit?

A. To measure Mr. Neely's farm.

Q. Did you see Mr. Neely? A. Yes.

Q. Did you have any conversation with Mr. Neely? A. Yes.

Q. And during that conversation, who was present?

A. Mr. Mathis, myself, and Mr. Neely.

Q. What was said?

A. Well, when we arrived there at the farm, Mr. Neely came there, there was the three of us talking, and I don't remember just exactly how it got started, but we soon made it known that we were there to measure the farm.

And he wanted to know why, or what it was about, and how come his farm.

And we told him that there was several farms that we had been instructed to measure. We had received instructions from the State Committee, and we weren't at liberty to go into it any further. And so it was all right with him for us to go ahead and measure his farm, which we did.

Q. Did you have any further conversations after the measurement?

A. I think so. One time, maybe twice.

Q. All right, when?

A. Well, I can't be sure exactly when. I know

(Testimony of Ray Wolfe.)

on one occasion at a time we measured there, we were talking about the fact that he was overplanted, had more cotton than his allotment, and he made mention of a lease that he had for, as I recall, 60 some-odd acres of cotton.

Q. What year was this in?

A. 1956. And I asked him if he had the lease, and he said he would see if he could find it, and he was going to bring it into the office if he could find it.

Then I talked to him in town, I think at the hotel where H. L. Mathis was working on weekends at one time.

Q. Who was present at that conversation?

A. H. L., and he, and myself.

Q. All right. And what was said?

A. I don't recall exactly. I know that he was interested in knowing just exactly what his position was, which we weren't in any position to tell him at the time, other than we were measuring it, his cotton.

He wanted to know about what it was going to cost him. I remember that that was a question quite often asked [96] of anyone who had excess cotton. We often said—I forget now in 1956 whether it was 150 or 175 dollars an acre, which was roughly the penalty on, say, Pinal County's average, and I think probably that I roughly multiplied the number of acres that he was overplanted, times either 150 or 175 dollars, and I probably stated that it

(Testimony of Ray Wolfe.)

would probably cost him at least that much, that I didn't know what further would happen.

Q. Did you have any further conversation with the Defendant Neely about this?

A. I don't recall it.

Q. Are you familiar with the Release and Reapportionment procedure that was used in Pinal County in 1954? A. Yes.

Q. What was the procedure?

A. Well, in 1954 in Pinal County, at least, it was being allowed for allotment from one farm to be released?

Q. What?

A. It was being allowed for the allotment from one farm to be released back to the County Committee with specific instructions to the County Committee that it be reapportioned to a specific farm.

Q. Was that procedure used in 1955 and 1956?

A. Well, I am sure it was not. In 1956 I know it was not. In 1955, I can't answer that positively, but I don't believe that it was. [97]

Mr. Hays: That is all, your witness.

Cross Examination

Q. (By Mr. Whitney): Now, your talk with Neely about the \$175 an acre, what he wanted to find out was what penalty, or what it would cost him?

A. I would assume so. That is the only information I could possibly even guess at.

(Testimony of Ray Wolfe.)

Q. As a matter of fact, didn't you have this penalty figured once on Mr. Neely's farm?

A. I can't be sure if we did on Mr. Neely's. On some of the cases that have gone before, I do know for a fact. It is likely we did. The record would probably bear it out one way or the other. From my own recollection, I can't state definitely.

Q. Where would you find that in the record, do you know?

A. All I know is this. At one time we in the County Office, on farms that we had established were overplanted, we prepared these notices of penalty due for overplanted farms. However, we never sent them out.

Q. Why were they not sent out?

A. They were not sent out, no.

Q. Why?

A. We were instructed not to send them out.

Q. By whom? [98]

A. I was instructed by the State Office. I believe it originated in the Legal Department. Our understanding was that the criminal aspects of the case were to be settled prior to the civil.

Q. In other words, rather than employ any such civil penalty, they were going to proceed criminally?

A. Yes.

Q. And they did in some cases, didn't they?

A. Yes.

(Testimony of Ray Wolfe.)

Q. Some cases that are through, and some that are coming up, and this one? A. Yes.

Q. Now, then, who sent out those notices of penalty? Would it be Mr. Mathis?

A. It would be a function of the County Office, and if at that time Mr. Mathis was the County Office Manager, that would be his responsibility, yes.

Q. And of course, if he got instructions from the State Office, or from the Government agents, he would not send them out, if he got those instructions? A. That is right.

Q. You know as a matter of fact that the penalty for Mr. Neely for 1956 was prepared?

A. No, I can't state that as a fact. I don't recall it specifically. [99]

Q. But it may have?

A. It may have, yes.

Q. Mr. Mathis would probably know that better, wouldn't he?

A. He might. I don't know.

Mr. Whitney: That is all.

Mr. Stanfield: No questions.

The Court: That will be all.

(Witness excused.)

The Court: The Court will stand at recess until ten tomorrow morning.

(Thereupon an adjournment was taken to the following morning, Thursday, September 11, 1958, at the hour of ten o'clock.) [100]

Thursday, September 11, 1958

Ten O'Clock A.M.

Court convened pursuant to adjournment.

Present: The same as before.

The Court: You may continue.

Mr. Hays: We will call Mr. Curry Love.

CURRY LOVE

called as a witness in behalf of the Government,
having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Hays): State your name, please.

A. Curry Love.

Q. Where do you live?

A. Casa Grande, Arizona.

Q. By whom are you employed?

A. At present, I am employed by the Palm Valley School in Palm Springs, California. [101]

Q. During the summer, did you have other employment in the past? A. Yes, I did.

Q. Specifically during the year 1956, in the summer did you have other employment?

A. Yes, I worked for the Pinal County Agricultural Stabilization and Conservation Committee.

Q. Had you worked there prior to that summer?

A. Yes, I had.

Q. How many years, or how many summer periods?

A. Approximately five. I am not sure of that.

Q. I hand you Government's Exhibit 11-D for

(Testimony of Curry Love.)

identification, and ask you to examine it, if you will. And what is that?

A. That is a Form we call a 578, which covers the cotton acreage on a farm, a produce farm.

Q. To whom does that pertain?

A. Rex Neely.

Q. And for what year? A. 1956.

Q. Have you ever seen that specific document before?

A. Well, I am not sure. Yes, I have. Yes, I have.

Q. Now, have you seen it before?

A. Yes, I have.

Q. Did you ever discuss that document with the Defendant Short? [102]

A. I did, yes.

Q. When? A. In the summer of 1956.

Q. And where?

A. In the Pinal County Office.

Q. And who was present?

A. Mr. Short and myself.

Q. And what was said?

Mr. Whitney: I object to it, as far as Mr. Neely is concerned, because Mr. Neely was not present.

The Court: All right, go ahead.

Mr. Hays: Go ahead and answer. What was said?

A. (By the Witness): Before I sent out the notices to the farmers, that was one of my duties to send out the notices, I gave the forms to Mr. Short to look over, and he said to hold this one out, not to send the notice immediately on it.

(Testimony of Curry Love.)

Q. (By Mr. Hays): Did you have any further conversation with Mr. Short concerning that particular document?

A. Yes. I kept the form in my desk for a while. I don't remember exactly how long. I asked Mr. Short at least twice, I am not sure how many times, about it, and he put me off some way. And then finally I took the form in to him, and just gave it to him, gave it to him in his room.

Q. Is that the last time you saw the document?

A. That, as far as I can recall, is the last time I saw the form.

Mr. Hays: Your witness.

Cross Examination

Q. (By Mr. Whitney): Who made the pencil notations of the acreage on that one?

A. Those are my figures.

Q. And on the back end?

A. Those are mine, too.

Q. Were you the computer down there?

A. There were three computers, I believe, that year.

Q. I note it contains supposedly the signature of the computer, Dorothy Pryor. Do you know how that came to be there?

A. No, I don't, unless we worked it together. It is one of the first maps we did, according to its number. It is Map I-2, Volume I, Map 2, and that would be one of the first ones we did. Perhaps we did it together. I am not sure.

(Testimony of Curry Love.)

Q. How long did you say you had that in your desk? A. I can't be sure.

Q. Can you approximate it? [104]

A. I would approximate it a month or five weeks.

Q. And what period of time was that?

A. I couldn't pinpoint the date on it.

Q. Was it prior or later than October, 1956?

A. It was prior.

Q. Prior. And do you remember when you gave that to Mr. Short?

A. No, I don't remember the specific date on that either.

Q. And Mr. Neely, at the time you had this, you didn't show it to Mr. Neely? A. No, sir.

Q. Did you know Mr. Neely at that time?

A. I did not.

Mr. Whitney: That is all.

Cross Examination

Q. (By Mr. Stanfield): Mr. Love, you stated first of all that you do not know exactly when you finished preparing this document, is that right?

A. I am not sure when it was finished. I presume it was early, because it was one of the first maps that was done, Map I-2, Volume I, Book 2, which was done early, I am sure.

Q. It was one of the first of the forms 578 that were computed, and that fixes the time in your mind? [105] A. That would be correct.

Q. Now, have you any recollection that Mr.

(Testimony of Curry Love.)

Short was employed there at the time as Office Manager? A. Yes, he was.

Q. Were you working in the office at that time, or were you working outside the office?

A. In the office.

Q. And you had plenty of occasion to see Mr. Short in the office, did you not? A. Yes.

Q. At the time you prepared this document, you would know whether Mr. Short was working full time or not, wouldn't you? A. Yes.

Q. And how was he working at that time?

A. Well, I can't pinpoint it as far as the 578 goes. I know that he was off sometimes during that summer, but whether it was then, I am sorry, I can't recall.

Q. When did your employment with the office end in that summer?

A. In the middle of September.

Q. I see. You are a school teacher, are you not?

A. That is correct.

Q. And you went back to Palm Springs to teach school as was your habit?

A. That is right. [106]

Q. Were you employed at the office when Mr. Short had his stroke in early September?

A. I was.

Q. And isn't it a fact that prior to that, prior to the time that he had the stroke he had been in ill health? A. That is correct.

Q. And isn't it a fact that from, oh, perhaps the

(Testimony of Curry Love.)

middle part of July he had only been working a couple of days a week in the office? A. Yes.

Q. And that as a result of his curtailment of time in the office, much of the paper work had gotten behind, isn't that right? A. Yes.

Mr. Stanfield: No further questions.

Redirect Examination

Q. (By Mr. Hays): Mr. Love, in response to a question from Mr. Whitney, you said you had asked Mr. Short about sending the notices out.

Now, what were those notices?

A. They were notices of overplant, or of compliance in relation to the cotton acreage. [107]

Q. In this particular instance, what would it have been, a notice of overplant, or a notice of compliance (handing document to witness)?

A. I can't tell from this document, but I recall the incident. It was overplant.

Q. It was a notice of overplant that would have been sent out when you asked about it, is that correct? A. That is right.

Mr. Hays: That is all.

Recross Examination

Q. (By Mr. Whitney): Mr. Love, you don't know whether the notice of overplant was ever sent out?

A. No, I don't know if it was ever sent out.

Q. Did you have anything to do with preparing the notice?

(Testimony of Curry Love.)

A. I simply gave them to Mr. Short, and then when he okayed them, I took them in to a girl, and she sent them. She typed the notices out.

Q. What was the name of the girl?

A. I believe it was Pauline Doster then. I believe she was the girl that sent it.

Q. You had nothing to do with the management of that office, did you? [108]

A. No, sir.

Q. In other words, you were just an employee and did what you were told?

A. That is right.

Q. The question of Mr. Short's illness was brought up. Do you remember when he was in the hospital?

A. I believe it was the early part of September. It was just prior to before I left, I know.

Q. And do you know where he was? Was Mr. Short in the hospital, or working part-time on the 3rd of October, 1956?

A. That I couldn't say.

Q. You haven't any recollection of that?

A. I wasn't there at that time. I left the middle of September.

Q. When did you leave?

A. The middle of September.

Mr. Whitney: That is all.

Recross Examination

Q. (By Mr. Stanfield): Mr. Love, did you have occasion to talk with Mr. Short, or at least see him after September 8th of that year?

(Testimony of Curry Love.)

A. I can't recall. I did see him in the hospital, yes. But I went down to the hospital with Mr. Mathis to see Mr. Short once. The time I don't recall, whether it was then [109] or not, I don't know.

Q. Did you have an opportunity to observe him at that time? A. Yes, I did.

Q. Would you describe his condition as it appeared to you.

A. For one thing, he couldn't speak——

Mr. Holohan: I object to that as immaterial.

The Court: He may answer.

A. (By the Witness): He couldn't speak. He couldn't express himself. He would write or point.

Q. (By Mr. Stanfield): I see. I would also like to ask this, Mr. Love. You said earlier that you finally gave to Mr. Short the Form 578 for the Short Staple for the 1956 crop year, that is correct, isn't it? A. That is correct.

Q. Isn't it a fact that this is only one of a number of 578 forms which were held up for one reason or another?

A. Yes, there were more than one.

Q. And that this wasn't an unusual occurrence at all?

A. No, there were other instances of the same.

Mr. Stanfield: Thank you.

Mr. Hays: No further questions. [110]

Recross Examination

Q. (By Mr. Whitney): Do you know approximately how many 578 forms were held up in the manner that you say this was?

(Testimony of Curry Love.)

A. No. I would be afraid to approximate it.

Q. As many as 30?

A. Perhaps. Not for long, maybe for only several days.

Q. Do you know any others that were held up for weeks? A. I recall one.

Q. You don't recall one? A. I recall one.

Q. Which one was that? A. John Beggs.

Q. John Beggs. He was the Chairman at the time of the office down there?

A. That is correct.

Q. Do you remember one from Mr. Haley?

A. I am not sure that I held one for that.

Mr. Whitney: That is all. No further questions.

Mr. Hays: That is all, thank you. May this witness be excused?

Mr. Whitney: No objection.

Mr. Stanfield: No objection.

The Court: He may be.

(Witness excused.) [111]

Mr. Hays: Mr. Ruth.

GLENN L. RUTH

called as a witness in behalf of the Government,
having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Hays): State your name, please.

A. Glenn Ruth.

Q. Where do you live? A. Mesa.

(Testimony of Glenn L. Ruth.)

Q. By whom are you employed, and in what capacity?

A. I am employed by the Valley National Bank, Main Street Branch, in Mesa, as Assistant Manager.

Q. You were supposed to bring certain records to this trial, is that correct? A. That is right.

Q. If you will, I will ask you to hand me these particular records, and hand me the ledger sheet, please, and the deposit slips, and Recordak.

A. I will get these back?

Q. Eventually.

A. These are bank records. I would like to hold on to them. [112]

Mr. Hays: If I may have just a moment to examine these. This is the first time we have seen them.

May these be marked?

The Clerk: Government's Exhibits numbers 20, 21, 22, and 23 for identification.

(Said Bank Records were marked for identification as Government's Exhibits 20, 21, 22, and 23, respectively.)

Q. (By Mr. Hays): I hand you Government's Exhibit 20 for identification, and ask you to state generally what that is.

A. This is a ledger sheet, which is the record of checks and deposits made by the depositor, covering the period September 22, 1954, to— It covers the period from September 3, 1954, through September 22, 1954.

Q. Pertaining to what account?

(Testimony of Glenn L. Ruth.)

A. October 15th, it covers.

Q. Pertaining to what account?

A. Rex L. Neely or Louise Neely.

Q. What is your position with the Valley National Bank at Mesa?

A. I am assistant manager.

Q. And you are presently acting manager, is that correct, in the absence of the manager?

A. In the absence of the manager, yes.

Q. And you have this record under your custody and [113] control as such manager?

A. That is right.

Q. That is a record kept in the normal course of business, isn't that right?

A. That is right.

Q. And you brought this from the records of the bank, is that correct?

A. Right.

Q. I will hand you Government's Exhibit 21 for identification, and ask you to state what that is.

A. This is a deposit slip in the amount of \$1500, deposited October 7th, 1954, or it is dated October 7th. We accepted it October 9th, in the name of Rex L. Neely.

Q. And that is from the official records of the bank?

A. Yes.

Q. I hand you Government's Exhibit 22 for identification, and ask you to state what that is.

A. This is a Recordak film of checks and deposits. That is transit items, items on banks other than our own, covering the period of October 9, 1954.

Q. Are there numerous items on that?

A. There are numerous items.

(Testimony of Glenn L. Ruth.)

Q. Is there one item on there pertaining to Rex L. Neely?

A. There is one. There is a picture of one check on this film of an item deposited by Rex L. Neely on October 9, [114] 1954, in the amount of \$1500.

Q. Did you cause a photostat of that to be made?
A. Yes, we did.

Q. And have you compared that with the photostat, that item?
A. I don't understand.

Q. Have you compared the photostat with the item on the Recordak, which is Government's Exhibit 22? Are they one and the same?

A. Yes, the photostat was made from the film.

Q. I hand you Government's Exhibit 23 for identification. Is that the photostat which was made from the Recordak which is Government's Exhibit 22?
A. It is.

Q. And this Recordak came from the official records of the bank which are in your custody and control?
A. It did.

Mr. Hays: At this time we offer in evidence Government's Exhibits 20, 21, and 23.

Mr. Whitney: I would like to ask the witness a question on voir dire.

The Court: All right.

Q. (By Mr. Whitney): Mr. Ruth, this deposit slip shows 1137, that is apparently \$1500? [115]

A. Right.

Q. Where did that number come from in banking parlance?
A. You mean 1137?

Q. Yes.

(Testimony of Glenn L. Ruth.)

A. That is a so-called transit number, which indicates the bank that the check was drawn on.

Q. Is this the one that the check was drawn on?

A. That is right.

Q. Where is the 1137 there?

A. (Indicating.)

Q. Oh, yes. And that is the Federal Reserve Bank at San Francisco?

A. Federal Reserve Bank at Los Angeles. The Los Angeles Branch of the Federal Reserve Bank.

Q. Oh, yes, of San Francisco. I notice that lots of payments out of this account were overdrafts.

A. That is right. There is an overdraft.

Mr. Whitney: The only objection I have got, your Honor, is this is a copy of the check. It seems to me that the original would be the best evidence. I object to it upon that ground alone.

The Court: It may be received.

The Clerk: Government's Exhibits 20, 21, and 23 in evidence.

(Said Documents were received in evidence as Government's Exhibits 20, 21, and 23, respectively.) [116]

Mr. Hays: We ask permission of the Court and counsel to return the Recordak, Government's Exhibit 22 for identification to the bank. It is for identification only.

Mr. Whitney: Oh, yes, you can give it back to him.

Mr. Hays: That's all we have of this witness.

Mr. Whitney: I have no questions.

Mr. Stanfield: That is all. No questions.

Mr. Hays: That is all. May this witness be excused permanently?

Mr. Whitney: I think so.

The Court: He may be.

(Witness excused.)

Mr. Hays: Mr. Kennedy.

DOYLE S. KENNEDY

called as a witness in behalf of the Government,
having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Hays): State your name, please.

A. Doyle S. Kennedy.

Q. Where do you live? [117]

A. I live in Concord, California.

Q. By whom are you employed, and in what capacity?

A. I am employed by the United States Department of Agriculture, as Special Agent in the Compliance and Investigation Division, Commodity and Stabilization Service.

Q. Did you assist in making the investigation in this case? A. Yes, sir.

Q. Do you know the defendant, Joe L. Short?

A. Yes, sir.

Q. Did you ever discuss the matters involved in this case with Mr. Short? A. I did.

Q. When?

A. On numerous occasions. The first time was

(Testimony of Doyle S. Kennedy.)

the early part of January, about January 10th, 1957.

Q. Then you had subsequent conversations with him? A. Yes, sir.

Q. Who was present?

A. At the initial conversation with him, his attorney Mr. Bill Stanfield was present, and Mr. Reed Cardon, another Special Agent of our Division.

Mr. Hays: Will you mark these for identification.

The Clerk: Government's Exhibits 14-A, 14-B, and 14-C; and Government's Exhibit 15 for identification. [118]

(Said Checks and Lease were marked for identification as Government's Exhibits 14-A, 14-B, 14-C; and Government's Exhibit 15.)

Q. (By Mr. Hays): I hand you Government's Exhibit 14-A for identification, and ask you to examine that.

What is it, just generally?

A. This is a check drawn, signed with the name of Rex L. Neely, to the order of Joe Short, drawn on the Mesa, Arizona branch of the Valley National Bank, dated April 5, 1954, in the amount of \$1,620.00.

Q. Did you ever discuss that with Mr. Short?

A. Yes, sir, I did.

Q. And I will hand you Government's Exhibit 14-B, and ask you to examine that.

A. This is a check drawn on the same bank, under the date of November 22, 1954, in the sum of

(Testimony of Doyle S. Kennedy.)

\$1,410.00, with the name Rex L. Neely signed as the drawer, and endorsed by the name of Joe L. Short.

Q. I hand you Government's Exhibit 14-C for identification, and ask you to examine that, if you will, please, and state what it is?

A. This is a check similar to the other two, drawn on the same bank, and for the same person, Joe L. Short, signed by Rex L. Neely, dated December 9, 1955.

Q. Did you have a conversation with Mr. Short regarding [119] these three items?

A. Yes, sir.

Q. Do you recall when that was?

A. That was in the early part of February, 1957.

Q. And who was present?

A. At that conversation, Special Agent Lloyd Johnson and I talked with Mr. Short.

Q. With regard to Government's Exhibit 14-A, what was your discussion with regard to that?

A. Is that the check dated——

The Court: Just a minute.

Mr. Whitney: I object as to the Defendant Neely, on the grounds there is no connection with him. As to the introduction of the checks themselves, that is something else again. His conversations with Mr. Short out of the presence of Mr. Neely are not admissible.

The Court: It would be admissible against Mr. Short. Go ahead.

Mr. Whitney: Against Mr. Short, that is right

(Testimony of Doyle S. Kennedy.)

Q. (By Mr. Hays): Proceed. What was your conversation regarding Government's Exhibit 14-A?

A. That was the check with the earlier date?

Q. I will hand it to you, so there will be no confusion.

A. This is a check for \$1,620.00 dated April 5, 1954. Mr. Short stated that he had received this check from [120] Mr. Neely in payment for securing excess, or extra cotton allotment acreage for him for the crop year of 1954.

Q. All right. With regard to Government's Exhibit 14-B for identification, what was your conversation with Mr. Short regarding that?

A. This is the check for \$1,410.00 dated November 22, 1954.

Mr. Short stated that he had accepted this check from Mr. Neely for securing extra cotton allotment for him for the crop year of 1955.

Q. Now, with regard to 14-C, what was your conversation regarding that?

A. This is a check in the amount of \$1,750.00, dated December 9, 1955.

Mr. Short stated that Mr. Neely had paid him this check for securing cotton allotment for the 1956 crop year.

Q. When was the first time you saw these three exhibits which we have just referred to?

A. I saw those three checks first at Mr. Neely's home in the early part of January, 1957. Or during the month of January. It might have been past the middle of the month.

(Testimony of Doyle S. Kennedy.)

Q. I hand you Government's Exhibit 15 for identification, and ask you to state, just generally, not specifically, what that is.

A. May I correct my testimony of just a minute ago? [121]

Q. Yes.

A. It may have been in February that I saw those checks. And it was at the ASC Office rather than at Mr. Neely's home.

Q. All right, proceed.

A. May I have the question again on this, please?

Q. Will you tell us what that is, just generally? Not specifically.

A. This appears to be a Lease dated March 30th, 1954.

Q. And when did you first see that Lease?

A. This I saw first at Mr. Neely's home in the latter part of January, 1957.

Q. And who was present at that time?

A. Special Agent Johnson and I were there discussing the matter with Mr. Neely.

Q. You had some conversation with Mr. Neely?

A. Yes, sir.

Q. And the conversation related to that lease?

A. Yes, it did.

Q. And what was said by Mr. Neely at that time?

A. Mr. Neely stated that he had obtained for the 1954 crop year this lease in exchange for his pay-

(Testimony of Doyle S. Kennedy.)

ment to Mr. Short of the, I believe \$1,620.00 he paid him for the extra cotton allotment.

Q. And Mr. Neely gave this lease to you and Mr. Johnson, is that correct? [122] A. Yes, sir.

Mr. Hays: We offer Government's Exhibit 15 in evidence.

Mr. Whitney: No objection at all.

Mr. Stanfield: No objection.

The Court: It may be received.

The Clerk: Government's Exhibit 15 in evidence.

(Said Lease was received in evidence as Government's Exhibit 15.)

Q. (By Mr. Hays): Did you ever discuss Government's Exhibit 15 in evidence with Mr. Short?

A. Yes, sir.

Q. When was that?

A. It was, I believe, in the early part of February, 1957.

Q. And who was present?

A. Special Agent Johnson and I discussed the matter with Mr. Short.

Q. And what was said?

A. Mr. Short said that he prepared this Lease himself in the ASC Office, and that he signed the Lease with the name of W. R. Burns, which he admitted was fictitious. That Mr. Rex Neely signed the Lease in his presence, also.

Q. Okay. Thank you. Referring again to Government's Exhibit 14-A, B, and C, and your conversation with Mr. Short [123] regarding them, did he

(Testimony of Doyle S. Kennedy.)

indicate whether or not he negotiated those checks?

A. Yes, sir. He stated with respect to these checks that the first two, Government's Exhibits 14-A and B, he thought that he had cashed and retained at least part, if not all of the money, putting the balance in his bank account.

With respect to Government's Exhibit 14-C, the third check for \$1,750.00, he stated that he had deposited it to his checking account in Casa Grande.

Q. Did he make any statement with regard to the endorsement on the back?

A. He stated that he had accepted these checks from Mr. Neely, and had cashed them.

I did not ask him whether this was his endorsement on the back. The whole tenor of the discussion was that these were checks that represented payment to him from Mr. Neely.

Mr. Hays: At this time, we will offer in evidence Government's Exhibits 14-A, B, and C.

Mr. Whitney: May I ask, these are three checks that were picked up by the Government from Mr. Neely?

Mr. Hays: That Mr. Neely gave the Government Agent.

Mr. Whitney: As far as Mr. Neely is concerned, there will be no objection.

Mr. Stanfield: No objection. [124]

The Court: It may be received.

The Clerk: Government's Exhibits 14-A, 14-B, and 14-C in evidence.

(Testimony of Doyle S. Kennedy.)

(Said Checks were received in evidence and marked as Government's Exhibits 14-A, 14-B, and 14-C.)

Q. (By Mr. Hays): Let us refer back to Government's Exhibit 15 in evidence. Calling your attention to that document on the bottom there, you will see a signature which purports to be the signature of Joe L. Short.

Did Mr. Short indicate whether or not he had signed that as a witness?

A. Yes, sir, he indicated that this was his signature.

Q. That he had signed as a witness on the Lease?

A. Yes, sir.

Q. Mr. Kennedy, I will hand you Government's Exhibit 1 in evidence. Now, that is what, Mr. Kennedy?

A. This is the Listing Sheets for both Short Staple and Long Staple cotton for the Crop Year of 1954.

Q. Will you refer to Farm 647, Short Staple Cotton, in that listing sheet.

A. Yes, sir, I have it.

Q. Did you have any discussion with the Defendant Short concerning an entry pertaining to Farm 647 on the Listing Sheet there?

A. Yes, sir, I did. [125]

Q. And when did this occur?

Mr. Whitney: I object to that on the part of Neely, as far as my client, Mr. Neely.

The Court: All right, go ahead.

(Testimony of Doyle S. Kennedy.)

Mr. Hays: Proceed.

A. (By the Witness): This occurred, I believe, during the month of February, 1957, at the ASC Office. Mr. Johnson and I were again talking with Mr. Short about this matter.

Q. (By Mr. Hays): What was said with regard to that item?

A. With regard to this entry, I asked Mr. Short why the original allotment of 319.8 acres had been changed to 400.8 acres, and he stated that, and this is for Farm 647, Mr. Rex L. Neely, and he stated that he had made or caused this change to be made in order to include therein the acreage from the dummy farm Number 595.

Shall I explain what that is?

Q. That's all on that part, thank you.

Do you have an entry on the Listing Sheet pertaining to 595, the dummy farm?

A. Yes, sir, I do.

Q. Will you find that, please.

A. I found it.

Q. What is the final entry there pertaining to that dummy farm? [126]

A. The final entry is zero.

Q. Is zero? A. Yes, sir.

Q. Are there any symbols there indicating the disposition of cotton allotment?

A. Yes, sir. The original allotment of 73.4 acres is struck out, deleted, and the initials SA, meaning "Surrendered Acres" is placed by it. And if I may go ahead?

(Testimony of Doyle S. Kennedy.)

Q. Go ahead.

A. On the Listing Sheet for Rex Neely, when the allotment was increased from 319.8 to 400.8 acres are the initials RA, which means "Released Acreage," or reapportioned acreage.

Q. Thank you. At this time, I hand you Government's Exhibit 9 for identification, and ask you just generally what is that folder?

A. This is a folder containing the material relating to Farm Number 595.

Q. Did you have any discussion with the Defendant Short regarding Farm 595?

A. Yes, sir.

Q. And when was that?

A. I discussed it with him several times. The first time was in the original conversation which I have related took place on January 10th, at which time Mr. Short acknowledged that he had accepted money for procuring extra allotments for [127] three different farmers in three crop years, with Mr. Neely being one of the farmers, and that he had used in 1954 Farm Number 595, the dummy farm, which he knew was not a farm at all, but which inadvertently had been allotted acreage for that year, that he had applied that acreage and changed the Listing Sheet for Mr. Neely to show the increase, or added that increase to Mr. Neely's original allotment.

Q. Did you discuss some of these specific documents on the Farm Folder, Government's Exhibit 9?

(Testimony of Doyle S. Kennedy.)

A. Yes, sir, I did, at a later time.

Mr. Hays: Mark that 9-A for identification, please.

The Clerk: Government's Exhibit 9-A for identification.

(Said Document was marked as Government's Exhibit 9-A for identification.)

Q. (By Mr. Hays): I hand you Government's Exhibit 9-A for identification. What is that?

A. This is a form which shows, or purports to show the production for the three years prior to 1954, the first year in which allotments were effective.

Q. With regard to what farm?

A. With regard to Farm 595.

Q. Did you have any conversation with the Defendant Short regarding that specific form?

A. Yes, sir, I did. [128]

Q. Government's Exhibit 9-A. Where was that?

A. This conversation was with Mr. Short in the ASC Office again. Mr. Johnson was present, and was, it was during either the latter part of February or in March, 1956.

Q. Let me show that to Mr. Whitney.

You had a conversation regarding that document with Mr. Short, is that correct? A. Yes.

Q. Will you tell us that conversation?

A. Yes, sir. He stated that this document was the basis for making up the listing sheet on any farm, and with regard to this particular farm, he had prepared this document himself. He identified

(Testimony of Doyle S. Kennedy.)

as his handwriting all of the writing on the document.

Q. And he had prepared it? A. Yes, sir.

Q. Who is the purported owner of this 595, as shown on that document? A. W. R. Burns.

Mr. Hays: We will offer Government's Exhibit 9-A in evidence.

Mr. Whitney: If your Honor please, we object to it as not binding on Mr. Neely, no proper foundation as far as Neely is concerned.

The Court: All right. [129]

Mr. Stanfield: I would like to ask Mr. Kennedy a couple of questions on voir dire, please.

The Court: You may.

Q. (By Mr. Stanfield): Mr. Kennedy, you are quite familiar with Government's Exhibit 1, are you not?

A. I have seen it several times, yes, sir.

Q. Would you turn to the listing sheet there for 1954, on Farm 595?

A. Yes, sir. I have it.

Q. You have examined that particular line before, haven't you, Mr. Kennedy? A. Yes, sir.

Q. You are familiar with what it says there, aren't you?

A. I couldn't recite it from memory, but by referring to it I know what it says.

Q. Now, on 595, for the year 1954, would you read the name designated as "operator," and the name designated as "owner."

A. Yes. The name of "operator" is shown as

(Testimony of Doyle S. Kennedy.)

Julian Woodruff, and the name of "owner" is shown as Kemper Marley.

Q. Mr. Kennedy, I hand you 9-A for identification here, and ask you to read the name designated at the top of that as the owner and operator.

A. Owner is W. R. Burns. The name of the operator is [130] shown as None.

Q. How do you account for the fact that the Listing Sheet designates the owner and operator as one party, or two parties, rather, neither one of which is on this form—what form is that?

A. This form is CN-364.

Q. How can you account for that difference, Mr. Kennedy?

A. The only accounting I can give for it is that Mr. Short told me this was purely fictitious and made up to support the alleged allotment.

Q. Can you state when this was made up?

A. I can only state what Mr. Short told me. He stated that he made it up.

Q. When? Did he tell you when?

A. No, sir. It was in the file folder when I examined the file folder.

Q. Did you examine the Listing Sheets for 1953?

A. There would have been none, as far as I know. There was no allotment in 1953.

Q. But there was allotment in 1950?

A. I didn't go back that far.

Q. You don't know prior to 1954 in connection with these items, you don't know who was the legal

(Testimony of Doyle S. Kennedy.)

owner as far as the office is concerned? You don't know who was the owner and operator, do you?

A. No, as far as I was concerned I was interested in the years 1954, '55, and '56, those being the years Mr. Short stated he accepted money for the allotment.

Mr. Stanfield: There is no objection.

Mr. Hays: All right.

The Court: It may be received.

The Clerk: Government's Exhibit 9-A in evidence.

(Said Document was received in evidence as Government's Exhibit 9-A.)

The Court: We will have our morning recess at this time.

(Recess.)

The Court: You may continue.

Q. (By Mr. Hays): Mr. Kennedy, I will hand you Government's Exhibit 9-A in evidence, and also Government's Exhibit 15 in evidence, and ask you whether or not there is a description of land on each of those documents? A. Yes, sir.

Government's Exhibit 9-A is the Farm Acreage Report made out in the name of W. R. Burns, and contains a description of the unit covered by the information therein.

Government's Exhibit 15, the Lease, also contains description of the unit covered by the Lease.

Q. I will hand you Government's Exhibit 13-A, and ask you [132] what that is.

A. This is a Warranty Deed made out to, or be-

(Testimony of Doyle S. Kennedy.)

tween Earl Treadway and Elizabeth Treadway. It also contains a description of the land covered therein.

Mr. Whitney: If the Court please, they speak for themselves. Nobody is questioning the description.

The Court: I don't know what this is leading to. Go ahead.

Q. (By Mr. Hays): All right, would you compare the description in the Warranty Deed with the descriptions contained in the previous two exhibits I gave you, which are 9-A and 15, and ask you whether or not the portion of the same land is involved? A. Yes, sir, it is.

Q. Mr. Kennedy, at this time I hand you Government's Exhibit 8 for identification, and ask you to state what that is.

A. This is a folder labeled to contain Form CN-410, Upland Cotton, 1954 Cotton Acreage Allotments, Release and Reapportionment Supplement.

Q. Now, did you have any discussion with the Defendant Short regarding an entry in that form?

A. Yes, sir, I did.

Q. When was that?

A. I believe that was in March, 1957. Either February [133] or March.

Q. And where was it?

A. It was at the County ASC Office with Mr. Johnson present.

Q. A Mr. Johnson was present?

A. Yes, sir.

(Testimony of Doyle S. Kennedy.)

Q. All right, what was said with regard to Farms 647 and 595?

Mr. Whitney: We object as applied to Neely.

The Court: All right, go ahead.

A. (By the Witness): Mr. Short stated that by the use of this form he made the entry for 595, the dummy farm, showing the release of the allotment for that year, and made another entry for Farm 647 showing it had been released to Farm 647, Mr. Neely's farm.

Mr. Hays: At this time we offer in evidence Government's Exhibit 8.

Mr. Whitney: Mr. Neely objects on the ground there is no proper foundation laid as against him.

The Court: All right.

Mr. Stanfield: I would like to ask this witness a question on voir dire.

The Court: You may.

Q. (By Mr. Stanfield): Mr. Kennedy, these records here containing Government's [134] Exhibit 8 for identification actually amount to a bunch of summarizations, do they not?

A. I don't know what you mean by "summarizations," because these show the individual numbers of the individual farms that are affected by this release and reapportionment procedure.

Q. Each of the entries on here is a summary taken from another document, presumably, and entered in here for the purpose of compiling a total, isn't that correct?

A. I wouldn't know, sir.

(Testimony of Doyle S. Kennedy.)

Q. Don't they appear to you there to have been made at one time?

A. I am not competent to pass on that. This is within the official records, and when I looked at it I saw that Farm Number 647 had a Reapportionment, a reapportioned allotment of 81 acres.

Farm 595 had an indication showing that a total of 73—wait just minute. A release of 73.4 acres.

Q. And you don't know how that figure came to be there?

A. All I know is Mr. Short said it was one of the forms kept in his office under that program.

Q. This was one of the forms kept?

A. One of the records kept in the office in 1954, yes, sir.

Q. Didn't he tell you where these figures were arrived at? [135]

A. I don't recall that he did.

Mr. Stanfield: Defendant Short will object to this on the basis of no foundation. Furthermore, it is not the best evidence.

The Court: All right, it may be received.

The Court: Government's Exhibit 8 in evidence.

(Said Document was received in evidence as Government's Exhibit 8.)

Q. (By Mr. Hays): I will hand you Government's Exhibit 17-C for identification, and ask you just generally what is that?

A. This is the original of an Allotment Notice for the crop year of 1954, made out to Mr. Neely.

Q. Have you seen it before?

(Testimony of Doyle S. Kennedy.)

A. Yes, sir, I have.

Q. And when was the first time you saw that?

A. The first time I saw that was when Mr. Johnson and I were talking with Mr. Neely in January of 1957, and Mr. Neely produced this from his records at his home in Chandler.

Q. And he gave that to you?

A. Yes, sir, this and two others.

Q. Have you had any discussion with the Defendant Short regarding that?

A. Yes, sir, I have.

Q. And when was that? [136]

A. Well, the first general discussion was Mr. Short's statement to me in January in our original contact with him, Special Agent Cardon and I.

That in each of the three years——

Q. Just a moment. Who was present at that time?

A. Mr. Stanfield, Mr. Short's attorney, Mr. Cardon, and I.

Q. First, what was said?

A. That in each of the three years, he had supplied Mr. Neely with an Allotment Notice covering the total amount of allotment, that is, his bona fide—his original allotment, plus the allotment Mr. Short secured for him. That for the year 1954 he had run this notice, and run the figures through the official records.

Q. Through what?

A. Through the official ASC records. That would be the lining out of this 1954 Listing Sheet,

(Testimony of Doyle S. Kennedy.)

and showing the additional amounts. That for the year 1955 and 1956 he had not changed any records, it was merely between Mr. Neely and him. And that he had, he thought, supplied Mr. Neely with only the original of the Allotment Notice, that it did not show up in the County Records.

Q. Did he make any statement with regard to that specific notice, however, Government's Exhibit 17-C?

A. Only that this is a Revised Notice which included the [137] allotment, the extra allotment acreage which he had secured for him.

Q. And he had caused it to be made up, is that correct?

A. Yes, sir, it was made up, he had stated, in the office.

Mr. Hays: We offer 17-C in evidence.

Mr. Whitney: As far as the Defendant Neely is concerned, there is no objection.

Mr. Stanfield: Defendant Short has no objection.

The Court: It may be received.

The Clerk: Government's Exhibit 17-C in evidence.

(Said Document was received in evidence and marked as Government's Exhibit 17-C.)

Q. (By Mr. Hays): I would like to hand you Government's Exhibit 11-B for identification, and ask you to examine that, please.

Generally, what is it?

A. This is referred to as Form 578, and it is with respect to the 1955 crop of Mr. Neely, the

(Testimony of Doyle S. Kennedy.)

measurements, and the figures showing the measured cotton, plus other showing destruction of cotton.

Q. Did you have any conversation with Mr. Short regarding that specific form?

A. Yes, sir, I did.

Q. When was that? [138]

A. That was in either February or March, 1957, at the County Office, at the ASC Office in Casa Grande, with special agent Johnson also being present.

Q. What was said at that time with regard to that form?

A. Mr. Short stated that he placed the "destroyed" figures in here, which are in red ink, and which total some 120 acres, and the final measurement after deducting the 120 acres, he placed those in there in order to make it appear that Mr. Neely was within his bona fide allotment.

The total acreage as measured was 426.5 acres. After deducting the destroyed acreage inserted in here of 120.4, the result is 306.1 acres, which was the allotment as shown on the records of the County Office.

Q. Did he state whether or not that cotton had been destroyed?

A. He stated it had not at that time.

Mr. Hays: We offer Government's Exhibit 11-B in evidence.

Mr. Whitney: May I ask one question?

The Court: You may.

Q. (By Mr. Whitney): Mr. Kennedy, did Mr.

(Testimony of Doyle S. Kennedy.)

Short tell you that those figures in red ink were on there when Mr. Neely signed that?

A. No, sir, he did not. My recollection is that he told me at that time that he didn't recall—first, may I say [139] that he stated Mr. Neely signed this in his presence on August 18, 1955.

Q. I see.

A. And that he did not think at that time those red figures were on there.

Mr. Whitney: We object to this on behalf of the Defendant Neely, on the grounds it is incompetent, irrelevant, and immaterial, and not the proper foundation.

The Court: It may be received.

The Clerk: Government's Exhibit 11-B in evidence.

(Said Document was received in evidence as Government's Exhibit 11-B.)

Q. (By Mr. Hays): I hand you Government's Exhibit 11-C for identification, and ask you what that is.

A. This is a similar—the same type of form reporting the Long Staple Cotton. The Form 11-B was for short staple.

Q. For the same year?

A. For the same year.

Q. For the same farm?

A. For the same farm. It also shows one point eight acres destroyed cotton in red ink, bringing the planted figure down to 3.8 acres from a measured figure of 5.6 acres.

(Testimony of Doyle S. Kennedy.)

Q. Did you have any conversation with the Defendant Short with regard to that particular form?

A. Yes, sir. [140]

Q. At the same time as previously mentioned with the other form? A. Yes, sir.

Q. And what was said?

A. The same circumstances as I have previously testified.

We talked about these two forms together, that it was signed in his presence by Mr. Neely, and that he, Short, had inserted those figures to bring it down so it would agree with the official records in the County Office.

Q. Did he say that this cotton had actually been destroyed?

A. He said it had not been destroyed.

Mr. Hays: We offer Government's Exhibit 11-C in evidence.

Mr. Whitney: May I ask a question on voir dire?

The Court: You may.

Q. (By Mr. Whitney): Mr. Kennedy, did Mr. Short tell you that when Mr. Neely signed this the figures in red were on that?

A. In my discussion on that, in both forms, Mr. Short's statement was he didn't think that they were on there.

Mr. Whitney: Defendant Neely objects to it on the grounds there is no proper foundation, not properly identified.

The Court: It may be received.

(Testimony of Doyle S. Kennedy.)

The Clerk: Government's Exhibit 11-C in [141] evidence.

(Said Document was received in evidence and marked Government's Exhibit 11-C.)

Q. (By Mr. Hays): I will hand you Government's Exhibit 11-E in evidence, and ask you if you have seen that form before?

A. Yes, sir, I have.

Q. What is it?

A. This is a copy, the office copy of an Allotment Notice to Mr. Neely for the crop year of 1956, indicating an allotment of 367.7 acres, and is dated December 1, 1956.

Q. Did you discuss that exhibit with the Defendant Short? A. Yes, sir, I did.

Q. Who was present?

A. Special Agent Johnson and I.

Q. Where was that?

A. At the County Office in Casa Grande.

Q. What did Mr. Short say with regard to that exhibit?

A. Mr. Short stated with respect to this exhibit that after the investigation of the Pinal County was started, which was in November, 1956, as a matter of fact, after I had left there the early part of December, that he instructed Mr. Mathis to make up this form and show an increased allotment.

I believe the proper allotment for this year was about 307 and some tenths acres. This allotment was made up [142] for 367.7 acres, and that he had

(Testimony of Doyle S. Kennedy.)

done that in order to try to conceal from the investigators the fact that a lesser allotment had been issued.

Q. Thank you. Excuse me just a moment.

Mr. Kennedy, I will hand you Government's Exhibit 12-A for identification, and ask you to examine that.

Generally, what is that document?

A. Generally, this is an application under the Agricultural Conservation Program, commonly known as ACP, for assistance in sharing the costs of both land leveling and ditch lining on the farm, executed by Mr. Neely, and dated May 24, 1954.

Q. Did you have any discussion with the Defendant Short concerning that document?

A. Yes, sir, I did.

Q. And when?

A. Either February or March, 1957.

Q. Where?

A. At the same Casa Grande County Office.

Q. And who was present?

A. Special Agent Johnson and I.

Q. What was said?

A. We discussed this form, and asked Mr. Neely when he made this application.

Mr. Whitney: Just a moment. You asked Mr. Neely, [143] or Mr. Short?

The Witness: I am sorry.

Q. (By Mr. Hays): Your conversation was with whom?

A. This conversation was with Mr. Short.

(Testimony of Doyle S. Kennedy.)

Q. All right, proceed.

A. And asked Mr. Short when this, if this date of May 24, 1954, was the correct date, and Mr. Short stated that it was.

Then we asked Mr. Short about the pencilled notation on here, which says, "Request for change of approval from first to second practice," the first practice being the land leveling. The second practice shown on here being ditch lining, and that has a date of 5/27/54. And Mr. Short stated that that was the date that this request had been made to change practices from number one to number two.

Q. I hand you Government's Exhibit 12-D for identification, and ask you what that is.

A. This is also an ACP form. Its number is 247. And it is a form used by the office to determine whether or not the practice shown above, and in this case it shows ditch lining, is needed, and it has a second space to show whether or not it is approved.

Q. At the same time as this previous conversation on the previous document, did you have a conversation with Mr. Short? A. Yes, sir. [144]

Q. Under the same circumstances?

A. Yes, sir.

Q. And what was said?

A. We asked him with respect—and I might add that on this form there is the statement of need approved by the Soil Conservation Service Technician, which is a requirement before any further thing could be done. It is signed "Doyle H. Dunkin", and

(Testimony of Doyle S. Kennedy.)

dated September 1, 1954. Mr. Dunkin's affiliation is shown as USID, which I believe is United States Indian, it has to do with the Indian Bureau.

Q. Interior Department?

A. Interior Department, I am sorry.

Q. Did Mr. Short make any statement with regard to the signature Doyle H. Dunkin?

A. Yes, sir, he did.

Q. What did he say?

A. He acknowledged he had forged the signature.

Q. That he had forged the signature "Dunkin" on that document? A. Yes, sir.

Q. All right. I hand you Government's Exhibit 12-E for identification, and ask you to examine that.

A. This is a carbon copy of the same form, with this time the Report of Performance filled out, showing 4,156 linear feet of lining had been put in, dated September 25, 1954, [145] and again signed with the name of Doyle, it is either H. or L., I am not sure which, Dunkin, with the United States Interior Department designation.

Q. Did you have a conversation at the same time, at the same place, and with the same people present, with Mr. Short concerning that document?

A. Yes, sir.

Q. What was said?

A. He made the same acknowledgment, that he had put the date on there, and had forged Mr. Dunkin's name there too.

Q. Excuse me, please.

(Testimony of Doyle S. Kennedy.)

All right, I will hand you Government's Exhibit 12-F, and ask you to examine that. What is it?

A. This is another ACP form which follows right in line with these, and this is the application for payment for the practices shown on both this and the preceding form.

Q. At the same time, the same place, and with the same people present, did you have another conversation? A. Yes.

Q. With Mr. Short? A. Yes.

Q. What was said with regard to that document?

Mr. Whitney: Mr. Neely was not present, though, was he?

The Witness: No, sir. [146]

Mr. Whitney: I object to it as to Mr. Neely.

A. (By The Witness): Mr. Short stated that he had executed these in such a manner as to, in the office procedure as it followed through, to make available this payment to Mr. Neely.

Q. (By Mr. Hays): I will hand you Government's Exhibit 12-A for identification, and ask you to look at that. A. Yes, sir.

Q. What is that?

A. This is the application for payment executed in the name of, and with the purported signature of Mr. Rex L. Neely, dated May 25, 1954. May 24.

Q. Did you also discuss that with Mr. Short, under the same circumstances?

A. Yes. This is the first of the four documents we discussed.

(Testimony of Doyle S. Kennedy.)

Q. Did he have any statement to make with regard to that?

A. Only that he identified that as his writing, the request for change of approval from land leveling to ditch lining. And that Mr. Neely signed it in his presence. It bears Mr. Neely's signature dated May 27.

Q. And he said Mr. Neely signed it in his presence? A. Yes.

Q. I hand you Government's Exhibit 12-B for identification, and ask you what that is. [147]

A. This is another Form 247, which I have testified was the intermediate form, where approval was given by the Soil Conservation Service, or another agency, and performance certified to.

Q. Did you discuss that one with Mr. Short at the same time?

A. Yes, sir. This is made out for land leveling. And it is, the form is signed at the bottom by Mr. Short, who identified his signature.

Q. Part of the procedure of the ACP, is that correct? A. Yes, sir.

Q. I will hand you Government's Exhibit 12-C for identification, and ask you what that is.

A. This is a carbon copy of the ACP Form 245, which is the final form, in this matter of handling it. This is similar to the white form which I was looking at a minute ago.

This shows land leveling, and is dated July 23, 1954, and shows the practice as approved by Joe Short.

(Testimony of Doyle S. Kennedy.)

Q. Did you have any conversation with the Defendant Short at the same time with regard to that?

A. Yes. This is one of the series of documents we discussed with him at the same time and place.

Q. And what did he say with regard to that document, if you recall?

A. To my recollection of this, it is that he stated that [148] this was never paid, because the practice was not approved for land leveling, and was changed over to this ditch lining which we have been discussing.

Q. Which we went into previously?

A. Yes.

Mr. Hays: At this time we offer in evidence Government's Exhibits 12-A, B, C, D, E, and F.

Mr. Whitney: May I have a moment to look at them, your Honor?

The Court: Yes.

Mr. Whitney: May I ask a question on voir dire?

The Court: You may.

Q. (By Mr. Whitney): Mr. Kennedy, referring to these exhibits, is that all the exhibits that were in the folder? A. Well, now, in what folder?

Q. In the folder that that came out of, of that ACP folder.

A. These were the ones we were interested in, and the only ones I remember discussing with Mr. Short.

Q. Was there another one in the folder showing

(Testimony of Doyle S. Kennedy.)

an application made by Mr. Neely in November, 1953, for ditch lining?

A. There may have been. The folder, as I recall now, contained not only for the year 1954, but for other years.

Q. All right. Now, then, what is the year, when would [149] you apply to do work in the spring of 1954, or anytime, when would you apply for that? You would apply in November or December, 1953, wouldn't you?

A. That is my understanding, sir, but I am not sure of the procedure. I know that they allocate certain funds to certain years, and accept application for them after the allocation has been made.

Mr. Whitney: That is all I want to ask on voir dire.

I object to it at the present time on the grounds there is no foundation.

The Court: It may be received.

Mr. Stanfield: No questions on voir dire.

Mr. Hays, I haven't even seen them yet.

Mr. Hays: I am sorry. I thought you said you had no objection (handing documents to counsel).

Mr. Stanfield: No objection.

The Court: They may be received.

The Clerk: Government's Exhibits 12-A through F in evidence.

(Said Documents were received in evidence and marked as Government's Exhibits 12-A through F.)

Mr. Hays: One final point, Mr. Kennedy.

(Testimony of Doyle S. Kennedy.)

Q. (By Mr. Hays): I hand you Government's Exhibit 1 in evidence, and ask you again to examine the entry pertaining [150] to 595. A. Yes, sir.

Q. And you previously stated that you had a conversation with Mr. Short regarding the entry there on 595, is that correct? A. Yes, sir.

Q. You were asked on voir dire the ownership indicated there on 595, and your answer was what?

A. Was Julian Woodruff.

Q. Calling your attention to the farm above, 594, what is the ownership indicated there?

A. I am sorry. I answered you incorrectly. The operator on 595 was shown as Julian Woodruff, and the owner as Kemper Marley.

Q. How about 594?

A. On 594 the name of the owner is Julian Woodruff, and Bill C. Burns.

Q. Did Mr. Short make any statements with regard to 594 and 595, and the fact that Mr. Woodruff is an owner on 594, and Mr. Kemper Marley is shown as an owner on 596?

A. Yes, sir. It comes back to me now.

This Mr. Short explained was the origin of the dummy farm that they had in processing the 1954 allotments, and this is all 1954. This listing sheet here, they had shown the wrong legal description on 595, and had later found [151] that it was not a farm at all, that it hadn't been a farm for some years, and it was at that point that instead of turning it back into the County and acknowledging the error, he decided that he would hold it as a reserve,

(Testimony of Doyle S. Kennedy.)

unbeknownst to the Committee Members, to make any adjustments that might be needed, if they had run out of reserve in making these adjustments or corrections.

Q. The confusion in the two names and the description resulted in the allotment to Farm 595 initially, is that correct?

A. Yes, and with regard to the name of Burns, he acknowledged that when he prepared the Lease which has been introduced in evidence here, signed by W. R. Burns, that he picked the name out of the air, but he might have been influenced by the fact that he saw this Bill C. Burns.

Q. On the farm up above?

A. That is right.

Mr. Hays: That is all.

Cross Examination

Q. (By Mr. Whitney): Mr. Kennedy, with reference to these exhibits concerning the ditch lining, I am handing you now Government's Exhibit 12 for identification, out of which some documents have been taken and introduced. [152]

I will ask you if you found that document in there (handing to witness)?

A. I am not sure whether this was in there or not. If it was in there now?

Q. It must have been.

A. No, sir, it probably was, but I have no way of knowing.

(Testimony of Doyle S. Kennedy.)

Q. You don't think I put it in there, do you?

A. No, sir. Neither did I.

Mr. Whitney: May I have this marked for identification?

The Clerk: Defendant's Exhibit G for identification.

(Said Document was marked for identification as Defendant's Exhibit G.)

Q. (By Mr. Whitney): Referring to Defendant's Exhibit G for identification, that is Government Form Number ACP-201, for request that the Federal Government share costs of needed conservation practices, is that right? A. Yes, sir.

Q. And on the face of that document, it shows that it refers to Farm 647 in Pinal County?

A. Yes, sir.

Q. And that is what we have been talking about here, the Neely farm? [153] A. Yes, sir.

Q. Now, then, this document was executed, was signed by the County Committeeman, was that name Elsberry? A. Elsberry.

Q. Elsberry. That is his signature?

A. It purports to be, and it looks like ones that I have seen of his, yes, sir.

Q. You would say it was his?

A. As far as I know.

Q. And that document is dated November 2nd, 1953?

A. That is the date of Mr. Neely's signature. There is no date opposite Mr. Elsberry's signature.

Q. That is the date Mr. Neely applied for this

(Testimony of Doyle S. Kennedy.)

concrete ditch lining, \$1500, in November 2nd, 1953?

A. Yes, sir. And it is marked "cancelled", as you see.

Q. I see that. I understand that you don't know whether Mr. Neely marked that cancelled, do you?

A. No, sir.

Q. You don't know that? A. No, sir.

Q. You don't know whose handwriting it is?

A. No.

Q. It is not yours? A. It is not mine.

Q. Nor mine? [154] A. Fine.

Mr. Whitney: Now, then, Mr. Clerk, I would like to have this marked for identification.

The Clerk: Defendant's Exhibit H for identification.

(Said Document was marked for identification as Defendant's Exhibit H.)

Q. (By Mr. Whitney): Mr. Kennedy, referring now to Defendant's Exhibit H for identification, which apparently is Form ACP-247, dated November 5, 1943, concrete ditch lining \$1500, signed by Joe L. Short. Is that Mr. Short's signature?

A. It appears to be.

Q. And that would indicate that Mr. Neely did apply for that practice in November, 1953?

A. I would assume so.

Q. All right. You know enough about the Government's agricultural business to know that they would apply the last part of 1953 for 1954 practices, wouldn't they?

A. That is my understanding, but I honestly

(Testimony of Doyle S. Kennedy.)

don't know exactly when, because different years when the funds are available, they may set different dates, and this shows——

Q. This shows it was for 1954 ACP?

A. This shows approved, which requires determination of need and practicability for 1954, and that's what this form is. [155]

Q. Legally, he could do that work on that ditch lining any time after November 3rd, 1953, and be within the law?

A. No, sir.

Q. Why not?

A. Because the law specifically provides that the performance of any part of the practice may not be begun until final approval is received.

Q. What is this?

A. That isn't final approval at all, as far as my understanding of it. This says "practice is tentatively approved."

Q. Mr. Neely is not a lawyer. He wouldn't know that, would he?

Mr. Holohan: I object to that as argumentative.

The Court: Sustained.

Q. (By Mr. Whitney): Have you got a form there where it is fully approved, as referred to here?

A. Yes. It is Form ACP-245.

Q. Have you got that file?

A. Yes, sir, Government's Exhibit 12-F in evidence is that form.

Q. Now, it is an approved practice, an application signed by Neely on November 27, 1954, for that same \$1500, for ditch lining?

(Testimony of Doyle S. Kennedy.)

A. That I am not prepared to say. It is the same, but this is certified by Neely that he has completed it on this date. [156]

Q. He had completed it before that date, hadn't he?

A. Yes, before that he applied for it, according to our investigation.

Q. And completed it between November 15th, 1953, and this date, he had completed it, you know that?

A. Our findings were that it was completed in the early part of 1954, yes, sir.

Q. It was completed sometime, as I understand from the tape recording you took from Mr. Neely, sometime between January and March of 1954?

A. In the early part of 1954, but I don't want to make it that I am testifying that this application which is dated November, 1953, is the application, because that is marked cancelled. There is a subsequent application.

Q. I know you wouldn't want to admit that.

Now, Mr. Kennedy, you have been testifying about what Mr. Short told you at different times?

A. Yes, sir.

Q. You took statements from Mr. Short, did you not?

A. I took one written statement from Mr. Short, and the remainder of our conferences were placed on a tape recorder, or used on tape recordings.

Q. And have you that statement?

Mr. Whitney: Will the Government produce that

(Testimony of Doyle S. Kennedy.)

written statement? I have what purported to be a copy, but [157] I don't know whether it is or not. Somebody gave it to me, and I didn't get it out of the Government files.

Mr. Hays: Just a moment. (Handing document to counsel).

Q. (By Mr. Whitney): I assume, Mr. Kennedy, that the tape recording was taken sometime after this statement from Mr. Short, which is dated apparently January 14, 1957?

A. The tape recording, we took a tape recording from which this statement was summarized, was drawn up. That was taken in the presence of Mr. Stanfield, Mr. Short, Special Agent Cardon, and me on January 10. I think you will find the statement is dated two or three days later. It took that long to get it typed up.

Q. You didn't take any tape recordings after this statement was made?

A. Yes, sir. Almost every time I talked with Mr. Short we had a tape recording.

Q. Reduced to writing?

A. No. They were not reduced to writing. I might add they were taken with their full knowledge and consent, however.

Q. Now, generally, with reference to Mr. Short's statement, didn't he tell you that he had accepted money from cotton producers in exchange for obtaining additional cotton allotments for them? [158]

A. Are you referring to this particular statement, or——

(Testimony of Doyle S. Kennedy.)

Q. Yes. A. Or the over-all?

Q. Yes.

A. Yes, he did. I can state that very definitely.

Q. Pardon? A. Yes, sir.

Q. And that was done quite frequently in that county, was it not? A. By Mr. Short?

Q. Yes.

A. In three instances that I know of.

Q. And what were those instances?

A. There was Mr. Neely was one. Mr. Ladd another. And Mr. Simmons another, all of whom paid Mr. Short money.

Q. Mr. Beggs or Mr. Haley didn't get any allotments from Mr. Short?

A. He didn't pay any money to Mr. Short.

Q. Did he get any allotments from him without paying any money?

A. Mr. Short didn't acknowledge it if he did.

Q. From the examination of the records, did you discover they did that?

A. We discovered various irregularities, Mr. Whitney, with respect to allotments, which are to the operation of the [159] office. We were making an investigation of the entire operation of the Pinal County Office.

Q. And you found, Mr. Kennedy, I assume, that that office was very loosely run, wasn't it?

A. No, sir, I wouldn't say it was very loosely run. We found some examples of——

Q. You found a lot of irregularities there?

A. Well, considering that there were around a

(Testimony of Doyle S. Kennedy.)

thousand farms, there were relatively few that we found that there were irregularities in.

Q. And you found, I assume, that there were a lot of farmers in Pinal County who did business in this office in Casa Grande that had overplanted over and above their allotment for the years 1954, 1955, and 1956?

A. Yes, they had overplanted, but in nearly every instance they had destroyed their cotton, or paid the penalty on it.

Q. We will get at that in a moment. It isn't against the law to overplant, is it?

A. No, sir, it isn't.

Q. And it isn't against the law to not plow it up, is it?

A. No, sir, not if you pay the penalty on it.

Q. As long as you pay the penalty?

A. That's right.

Q. And when the Government finds that a man has overplanted, [160] and knows of his overplant, and knows what his overplant is, they send out a notice of overplanting, do they not?

A. That is the procedure. They normally send the notice out. Mr. Short, in my conversations with him, indicated that he felt it was equally as proper to notify them orally if they were in the office, that they were overplanted.

Q. Well, the ordinary procedure would be to send a notice?

A. That was the normal thing to do, yes.

Q. And if the grower failed to plow up the ex-

(Testimony of Doyle S. Kennedy.)

cess cotton he had planted, then he was assessed the penalty, is that right?

A. The grower, the notice that is sent out provides that it must be destroyed within twenty days, or the penalty will then be assessed, yes, sir.

Q. And if it isn't destroyed within the twenty days, the Government of course checks on the farm and send out the notice of the penalty, is that right?

A. If it is not destroyed within twenty days, it is then remeasured sometimes, to be sure.

Q. That's right.

A. And then the penalty is assessed for the excess acreage.

Q. That penalty amounts to around about, at that time, about seventeen cents a pound, or maybe a little better? [161]

A. Yes, sir, it was about fifty percent of the market price.

Q. And all the farmer that had overplanted would have to do then when he got his notice of the penalty was to write out a check to the Treasurer of the United States, and the matter would be closed, isn't that right?

A. Well, I would assume if he paid his penalty, the matter would be closed, for the amount assessed him, but there were certain procedures gone through with before they even sent his notice of penalty.

Q. You know, do you not, that Mr. Neely got a notice for overplant on his Maricopa County farm, and had paid the penalty after investigation?

A. I didn't investigate that part, but that is my

(Testimony of Doyle S. Kennedy.)

understanding, that Mr. Neely had during one year at least paid some penalty in Maricopa County.

Q. Have you any idea that if Mr. Neely had been sent a notice of his overplant, and had failed to destroy his cotton, and had been sent another notice for the excess, he would not have paid it?

A. I can't answer that.

Mr. Holohan: I object to that as pure speculation.

The Court: He can't answer that.

We will suspend until two o'clock. Keep in mind the Court's admonition.

(The noon recess was taken.) [162]

Afternoon Session

Thursday, September 11, 1958

Two O'Clock P.M.

Court resumed pursuant to recess.

Appearances: Same as before.

The Court: You may continue.

DOYLE S. KENNEDY

resumed the stand and testified further as follows:

Cross Examination—(Continued)

Q. (By Mr. Whitney): Mr. Kennedy, before we go back into Mr. Short's statement, which the United States Attorney so kindly let me have, I would like to ask you questions about that penalty.

I am referring now to the 1956 overplant, if any.

Do you know, as a matter of fact, that the penalty

(Testimony of Doyle S. Kennedy.)

against Mr. Neely for overplanting in Pinal County for the year 1956 had already been **made up in the** County Office at Casa Grande?

A. Do I know as a matter of fact whether or not it had?

Q. Yes. A. No, sir, I do not.

Q. Did you make any investigation to determine whether [163] it had?

A. My recollection is that they had tentatively discussed the overplant, but I don't recall that the penalty actually had been computed.

Q. You were not in the courtroom when Mr. Wolfe testified, were you? A. No, sir, I was not.

Q. Do you know whether or not the State office, or you or Mr. Johnson, the government investigators, had this penalty held up?

A. Yes, sir, I do know that there was some discussion as to whether or not the payment of a penalty at that time would have any effect on the cases coming up, and it was decided to withhold, if I am not mistaken, the demand for the penalty until such time as this case was completed. I believe I am right on that.

Q. But you know, or do you, as late as October 1, 1957, forms were sent to Mr. Neely by Mr. Elsberry of the office at Casa Grande, or a statement as to the plantings for different years, so they could determine the plant penalty, or did you know that?

A. I knew that a series of these people were involved in cases similar to this, and had been sent

(Testimony of Doyle S. Kennedy.)

—were requested to supply information regarding their crops, I believe from 1950 or 1951, on to date. That is a procedure I think that [164] is authorized by the regulations.

Q. And that procedure was gone through for the purpose of determining the penalty?

A. Well, it would appear so, but I can't say positively that it was.

Q. I see. And, of course, did you know that Mr. Neely did not fill those out because it was after the indictment had been returned in this case?

Mr. Holohan: I object to all this as immaterial.

The Court: If the witness knows, he may answer.

Q. (By Mr. Whitney): Do you know that?

A. No, sir, I don't know that.

Q. Referring to Defendant's Exhibit F for identification, which purports to be a letter of October 11, 1957, from Mr. Elsberry, in which he enclosed Form MQ-98, Upland Cotton Production.

A. Yes, 98 is correct.

Q. And that is Mr. Elsberry's writing?

A. As far as I know, it is, yes.

Q. You are somewhat acquainted with his writing?

A. I have seen it before, yes.

Q. Those are the forms that I have reference to?

A. Yes, sir.

Q. Now, you stated, I believe, that you don't know as a matter of fact whether the penalty against Mr. Neely for [165] overplanting in 1956 has actually been made up?

A. As a matter of fact, no, sir, I don't recall.

(Testimony of Doyle S. Kennedy.)

Q. You don't recall ever seeing it?

A. I don't remember.

Mr. Whitney: I will ask Mr. Hays if you have got such in your files.

Mr. Hays: No, I have no information in regard to the penalty in the files.

Q. (By Mr. Whitney): Now, with reference to the lease that has been introduced in evidence here, which it now determines probably is, as far as the Government is concerned a phony lease; referring to Government's Exhibit 15 in evidence, where did you get that?

A. This was turned over to me and Special Agent Johnson by Mr. Neely at his home in Chandler.

Q. He turned over that and all of his Marketing Cards that he had, and his cotton allotments for 1954, 1955, and 1956?

A. As I recall, he turned this over, cotton allotment notices, for '54, '55, and '56, and I don't believe he had any Marketing Cards, or if he did, he didn't have a complete set of them.

Q. I see.

A. And he authorized us to get the cancelled checks that are in evidence. [166]

Q. And he fully cooperated with you?

A. Yes, sir.

Q. What did he tell you about that lease?

A. In what respect, sir?

Q. About how he came to get it.

A. He stated that he wanted to get some extra

(Testimony of Doyle S. Kennedy.)

allotment for 1954 crop, and that he contacted Joe Short, and Short indicated he might be able to get some for him.

Subsequently, Short presented him with the lease, and indicated that that represented surplus cotton allotment.

Q. Did he also tell you that prior to the time that he got this lease that he gave Mr. Short a check for \$1,620 dated on March 20, 1954?

A. There was some discussion with respect to Mr. Neely's payment for the 1954 allotment.

As to a check on which he had stopped payment. Now, I didn't see that check. He did acknowledge that he gave——

Q. That he gave that check?

A. That he gave a check which he identified, I believe it is dated April 5th.

Q. Fifth?

A. April 4th or 5th, but he was unable to recall the circumstances which caused him to stop payment on the first check, and then reissue in effect the check a few days later.

Q. Can I refresh your memory on that, if you remember it? [167] A. Yes.

Q. Did Mr. Short tell you that he gave Mr. Neely a check for \$1620 for 81 acres allotment on the Burns lease, and that he had talked it over with his brothers and the Valley National Bank manager at Mesa, and that they told him he had better get a lease, and not take anybody's word for it?

Do you remember anything like that?

(Testimony of Doyle S. Kennedy.)

A. I think you said did Mr. Short tell me that? Would you mind reading the beginning of the question back.

Mr. Whitney: Read the question.

(The last question was read.)

The Witness: You mean did Mr. Neely tell me this?

Q. (By Mr. Whitney): Yes.

A. My recollection on that is rather vague. There was some discussion with respect to first giving a check, and then at the time he talked with me, as I recall, he couldn't remember exactly why he stopped payment on the check, but that subsequently he said that it looked like it was all right, so he gave another check.

Q. After he had gotten this lease?

A. Well, I believe the lease is dated March 30th.

Q. March 30th. And the check was dated April 4th or 5th? A. Yes.

Q. That's right. And that check I am referring to now [168] is in evidence as Government's Exhibit 14-A, \$1620, dated April 5th, 1954?

A. Yes, sir.

Q. And you are sure he didn't show you any check where the payment had been stopped?

A. I don't recall it. And as a matter of fact, he had no checks. He said his accountant had the checks, and we got those later from the accountant.

Q. Did you see a check on which payment was stopped?

(Testimony of Doyle S. Kennedy.)

A. I have never seen a check on which payment was stopped, no, sir.

Q. Did Mr. Neely tell you that he knew that this lease was in any way phoney? A. No, sir.

Q. In other words, in his conversation with you, he thought this was a legitimate lease, didn't he?

A. That was the impression I got, yes, sir.

Mr. Whitney: Now, Mr. Hays, have you got the notes of farm acreage allotment for 1954, the three of them that Mr. Neely gave Mr. Johnson, or Mr. Kennedy? One of them may be in evidence.

Mr. Hays: What do you mean, the notes?

The Witness: The photostats.

Mr. Hays: You mean notices?

Mr. Whitney: Yes. [169]

Q. (By Mr. Whitney): Referring to Government's Exhibit 17-A for identification, which apparently is a Notice mailed Mr. Neely on Form MQ-24, Notice of Farm Acreage Allotment, Marketing Quota for the 1954 Crop of Upland Cotton. That shows signed by Mr. Elsberry for 252.2 acres.

Was that the correct allotment at that time?

A. I would have to look at the Listing Sheet, but this looks——

Q. I don't want to take up all this time.

A. I am not trying to evade you.

Q. I know. A. May I see the other?

Q. Yes. A. Are they for different years?

Q. No, all for 1954.

A. This appears to be the original allotment that was sent out for that year, yes, sir.

(Testimony of Doyle S. Kennedy.)

Q. Now, referring to Government's Exhibit 17-B for identification, which was also signed by Mr. Elsberry, and dated, this first one was dated 12/11/53. This was 2/16/54, which shows a previous allotment notice of 12/11/53. This shows 319.8 acres.

Can you tell me what caused that second notice to be sent out?

A. It appears to be a revision in the allotment, [170] Mr. Whitney.

Q. Now, to refresh your memory, and maybe I am incorrect about this, I can't keep up with the Government, but didn't Congress pass an act about that time in which they increased the allotment?

A. Yes, sir, that was what I was referring to.

Q. And they increased the allotment to the State, and the State in turn increased the allotment to the County, and then the counties refigured the allotments and added it to what the farmer was supposed to have?

A. My understanding is they revised the allotments upward, because they got this extra acreage, and this apparently is the result of that investigation.

Q. There is nothing wrong with those two allotments, is there?

A. As far as I know, there isn't.

Q. All right, referring to Government's Exhibit 17-C in evidence, which is signed by Henry D. Haley, for the Pinal County Committee, which showed a previous notice of 2/16/54, this was dated 3/19/54, for 400.8 acres.

(Testimony of Doyle S. Kennedy.)

Do you know how that came to be raised that amount?

A. Yes, sir. These are a series of three allotment notices, the last of which is 400.8 acres, and I believe as I testified this morning, that was increased under this released acreage surrendered by this dummy farm 595. [171]

Q. Covered supposedly by the Burns lease?

A. It shows on the Listing Sheet as being released acreage, and that is the basis for this allotment notice.

Q. In other words, that 81 acres added to this notice of 319.8 exactly means, or makes it 400.8?

A. 81 and that amount make 400.8.

Q. Assuming that that lease there that we have been talking about or discussing was a bona fide lease—we know now that it isn't, but assuming that is a bona fide lease, there would be nothing wrong with that allotment of 400.8?

A. That would be something that the County Committee would have to pass on.

Q. And if they passed on it and allowed it?

A. Then that is within their discretion.

Q. That is within their discretion. Now, then, you know that allotment was transferred quite frequently down there in Pinal County from farm to farm? Somebody didn't have enough water to plant his cotton, or somebody else had some reason for not using his allotment?

A. What year are we referring to?

Q. 1954.

(Testimony of Doyle S. Kennedy.)

A. 1954, I know that under this release and re-apportionment procedure used by that County, that there were several transfers of allotment, yes, sir.

Q. And there was nothing wrong with those?

A. That I can't pass on.

Q. But you don't know of anything wrong?

A. I know there is no other county that used that procedure, to my understanding, and that Pinal County was prohibited from using it after 1954.

Q. Now, did Mr. Neely tell you that he was required to give Mr. Burns a sublease back for this same acreage, that there was the statement in it, "Lessee to have the right to plant any crop he desires on the premises except cotton."

Did he call that to your attention?

A. He told me he didn't even know Mr. Burns, and he never called that to my attention. He never heard of it before.

Mr. Whitney: Will you mark this for identification.

The Clerk: Defendant's Exhibit I for identification.

(Said Sublease was marked as Defendant's Exhibit I for identification.)

Q. (By Mr. Whitney): Showing you Defendant's Exhibit I for identification, you have never seen that before? It purports to be a copy of a sublease.

A. No, I have never seen this before.

Q. Is that the same description as the Burns and?

(Testimony of Doyle S. Kennedy.)

A. Let me see. It is the Northwest Quarter of Section 3, Township 6, Range 7 East. [173]

Q. It is the same thing, but you have never heard of that before? A. No, sir.

Q. Now, did you have occasion to examine during your investigation what was referred to in the other trials as the Control Register, but in this case it is referred to as Defendant's Exhibits A and B for identification?

A. I have examined that, yes, sir.

Q. And you found in no control register quite considerable overplanting in that county by various and diverse farmers?

A. I found the record was quite incomplete, to begin with, and in several, if I may go ahead, that appeared to be overplanted, by examining the folders for the particular farms we found the cotton had been destroyed.

Q. And this form did show that cotton was destroyed on various farms?

A. Ask the question again, sir.

Q. Did various farms here show that cotton was overplanted, and the excess had been destroyed?

A. In some entries there, yes, sir.

Q. In some of those entries, it also showed that they still got their Marketing Cards?

A. After they had destroyed the cotton?

Q. Yes. A. Yes, sir. [174]

Q. And without having actually destroyed it?

A. Well, that I can't say.

(Testimony of Doyle S. Kennedy.)

Q. Now, Mr. Kennedy, referring to Defendant's Exhibit D for identification, which is a copy of the document that is on the bulletin board down here at Casa Grande that I had Mr. Davis make me a copy of, have you ever seen that?

A. I saw it on the bulletin board down there the other day for the first time.

Q. Who authorized putting out that document?

A. That I couldn't answer, because I don't know.

Q. You will note there that the measurements will be handled in a different manner than previously handled, and so forth. In other words, it changed the methods of measurement?

A. Yes, so it says there. I am not familiar with their present methods of measurement.

Q. Now, Mr. Kennedy——

Mr. Whitney: First, I would like to have this marked as an exhibit for identification.

The Clerk: Defendant's Exhibit J for identification.

(Said Statement was marked as Defendant's Exhibit J for identification.)

Q. (By Mr. Whitney): I believe you have stated that you took a statement from Mr. Short, Joe L. Short, on or about [175] the 14th day of January, 1957?

A. Yes, sir.

Q. And in that statement, Mr. Short completely exonerated Mr. Neely?

A. I didn't state that.

Q. You didn't say that, but I say in that statement didn't he say that Mr. Short——

(Testimony of Doyle S. Kennedy.)

Mr. Holohan: I object to that. The statement is the best evidence of what he said.

The Court: I think so.

Mr. Whitney: Very well. I imagine that is correct.

Q. (By Mr. Whitney): That is Mr. Short's signature?

A. This is the original of the statement. That is my signature there, and Mr. Stanfield's, Mr. Cardon's, the other Special Agent, and Mr. Short. Yes, sir.

Mr. Hays: We have no objection to its admission in evidence, Mr. Whitney, if you want to put it in evidence.

Mr. Whitney: We offer it.

The Court: It may be received.

The Clerk: Defendant's Exhibit J in evidence.

(Said Statement was received in evidence and marked as Defendant's Exhibit J.)

Q. (By Mr. Whitney): Mr. Kennedy, in this statement I notice it says: [176]

"During each of the three crop seasons mentioned, that is to say, 1954, 1955, and '56, I accepted money from cotton producers in exchange for obtaining additional cotton allotments for them. I led these producers to believe that I obtained such allotments either from my own farm, or through a deal with other producers who had allotments which were unplanted. They trusted me, and insofar as I know, they believed my representation."

(Testimony of Doyle S. Kennedy.)

That was part of the statement that Mr. Short made? A. Yes, sir.

Q. Now, this morning I believe you made a statement about how these penalty notices were sent out.

Mr. Whitney: I would like to have this document marked for identification.

The Clerk: Defendant's Exhibit K for identification.

(Said Letter, 9/12/55, was marked as Defendant's Exhibit K for identification.)

Q. (By Mr. Whitney): Showing you Defendant's Exhibit K for identification, which purports to be Notice with reference to excess cotton acreage for some farm had by Mr. Neely in Maricopa County, that is what you were talking about, where they said 17.7 cents a pound? [177]

A. This appears to be a notice of penalty of 17.7 cents, yes, sir, if the cotton is not destroyed.

Mr. Whitney: That is right. We offer this.

Mr. Holohan: We object to the document. It deals with the year 1955 in Maricopa County.

The Court: All right, objection sustained.

Mr. Whitney: Will you mark this.

The Clerk: Defendant's Exhibit L for identification.

Mr. Holohan: We have no objection to any so-called payment of penalty, if that is the next check you were going to offer.

Mr. Whitney: Well, without the other——

Mr. Holohan: You don't need a foundation, if we don't object to it.

(Testimony of Doyle S. Kennedy.)

Mr. Whitney: You mean you have no objection to Defendant's Exhibit L, the payment of the penalty of Maricopa County?

Mr. Holohan: We have no objection.

The Clerk: Defendant's Exhibit L in evidence.

(Said Check was received in evidence and marked as Defendant's Exhibit L.)

Q. (By Mr. Whitney): Of course, Mr. Kennedy, I don't suppose that you could connect this up in any way, Defendant's Exhibit L in evidence, with K in evidence? [178]

A. Inasmuch as I haven't even been to the Maricopa County Office, and this pertains strictly to Maricopa County, I am afraid I couldn't.

Mr. Whitney: Would you mark this for identification.

The Clerk: Defendant's Exhibit M for identification.

Q. (By Mr. Whitney): Referring, Mr. Kennedy, to Defendant's Exhibit M for identification, this is the check that I asked you about that you didn't think you saw. I am asking you now if that doesn't refresh your memory. Maybe it doesn't. I don't know whether you saw it or not.

A. This is a check dated March 20, 1954, for \$1,620, payable to Joe Short, signed by Neely, with the payment stopped on it.

No, sir, I have never seen that check.

Q. That check was apparently made out prior to the lease of March 30th?

A. It carries an earlier date.

(Testimony of Doyle S. Kennedy.)

Q. And the lease carries an earlier date by five days of the other check for \$1,620.

Do you remember, Mr. Kennedy, with reference to the 1955 cotton crop of Mr. Neely in Pinal County, of Mr. Short telling you that he got \$10 from Mr. Neely, which was the fee for measurement, and went out to Mr. Neely's farm?

A. I remember Mr. Short stated that Mr. Neely had paid [179] the \$10 fee for measurement of destroyed cotton, and that he was supposed to go out there now. I am not sure whether he even went out, or not.

Q. Now, you talked to a lot of the farmers about Mr. Short, haven't you?

A. Not so many, no, sir.

Q. You don't know whether he was rather a tough administrator in that office, or not?

A. I am not in a position to judge that, sir.

Mr. Whitney: I think that is all.

Cross Examination

Q. (By Mr. Stanfield): Mr. Kennedy, you remember the circumstances of the taking of this statement? A. Yes, sir, I do.

Q. And do you remember that you and I and Mr. Short, and this other gentleman, I think his name is—— A. Mr. Cardon.

Q. Cardon? A. Reed Cardon, yes, sir.

Q. And you had a recording machine there, a tape recorder, did you not? A. Yes, sir. [180]

(Testimony of Doyle S. Kennedy.)

Q. And that the words contained in this Statement are not those on the tape?

A. They are a summary of the tape. The tape runs, as I recall, for around two hours.

Q. And these are a condensation from that tape?

A. Yes, sir.

Q. Do you happen to know who condensed it?

A. Yes. I did.

Q. All by yourself, or did Mr. Cardon help you?

A. I think I did most of it myself.

Q. There were some other tapes taken, weren't there, Mr. Kennedy?

A. Subsequent to that time, every interview that I had with Mr. Short, with the exception of maybe one or two very short ones, were all taken on tape, and that includes interviews, not only with respect to Mr. Neely, but also with regard to other irregularities, taken at our office.

Q. Did you take any statements out at Mr. Short's house?

A. Any written statement?

Q. Any in which you used the machine?

A. Not that I recall.

Q. Aside from that taken in my office, you took all of the other tapes down at the ASC Office in Casa Grande?

A. In a little private office in the back, yes, sir.

Q. You never reduced those to writing, did you, Mr. Kennedy? [181]

A. No, sir.

Q. Why was that?

A. As a matter of fact, you will recall that I think Mr. Short said he wouldn't sign any more

(Testimony of Doyle S. Kennedy.)

statements. That was in your presence, I think, Mr. Stanfield, at the time we took that statement.

Q. My recollection is different. Didn't you in fact say that he wouldn't sign anything along this line unless I had looked at it?

A. He may have.

Q. The fact remains somebody reduced the others to writing? A. No, sir.

Q. Condensed or otherwise? A. No, sir.

Q. You have no independent recollection of asking him if he would sign other statements, have you? A. No, I don't.

Q. Then aside from that fact, is there any reason why you did not reduce the others to writing?

A. They ran into hours and hours and hours of comment, and going over the same things more than once.

It was not reduced to writing, because we felt, or I felt that that original statement there covered the broad outline of the irregularities. [182]

Q. In preparation of this trial, you have refreshed your memory as to those statements, have you not?

A. Oh, yes, if you mean have I listened to the tapes; yes, I have.

Q. You listened to all of the tapes in preparation for this case, have you not? A. Yes, sir.

Q. Did you prepare notes from which to testify as to the statements that Mr. Short made that you have referred to in your direct testimony?

(Testimony of Doyle S. Kennedy.)

A. No, sir. I mean, will you rephrase the question? I am not sure I understood it.

Q. You have conceded that you have listened to the tapes? A. Yes.

Q. What I want to know, did you make any notes from the tape or tapes?

A. At the time I have listened to them in preparation for this?

Q. To prepare yourself for testimony on direct.

A. No, sir.

Q. The reason I ask that is because you made some specific references to terms that I did not recall, and I want to ask you some questions about that. A. All right, sir. [183]

Q. Before I get into that, I would like to talk to you about the Farm 595.

Isn't it a fact that in your investigation, there was an indication that 595 had existed prior to 1954?

A. Do you mean the property that, or which is legally described now as Farm 595 had existed as what? As a farm?

Q. We know it existed as land.

A. Yes.

Q. Because we have heard testimony on that.

A. Right.

Q. Then obviously I mean farm. Did it exist as a farm before 1954?

A. My understanding was, and what I found out during the investigation, that in the late 1940's, probably as late as maybe 1950, it was operated

(Testimony of Doyle S. Kennedy.)

as some kind of a farm, and there was some cotton grown on it, but since 1950, it had been in effect abandoned, and it had more or less gone back to desert.

Q. As to the assigning of cotton allotment to 595 for the year 1954, that would have happened in 1953, wouldn't it?

A. The Listing Sheets would have been made up in the latter part of 1953, yes, sir.

Q. And the allotment assigned to it at that time?

A. Yes, sir.

Q. And has everything you have seen so far from your [184] investigation been to the effect that Mr. Short is the person who assigned the allotment to it, or do you know?

A. Well, I am not sure I understand your question. I can tell it in my own words, if I may.

Q. I will rephrase the question.

A. All right.

Q. You stated earlier, I don't know what the exhibit was that contained it, there was a history for the years 1951, '52, and '53, established on this farm 595.

A. I stated that this form purported to show a history for that farm.

Q. That is the one Mr. Short——

A. That is the one Mr. Short made up.

Q. It shows W. R. Burns as the operator?

A. Yes, sir.

Q. Once again handing you Government's Ex-

(Testimony of Doyle S. Kennedy.)

hibit 1 in evidence, would you locate Farm 595 on there again? A. Yes.

Q. Do you know offhand when that would have been prepared, that listing on there?

A. The sheet normally is prepared, and it is dated December 10, 1953, when it was listed and computed, so it would have been around the latter part of 1953.

Q. This sheet also shows who prepared it, does it not?

A. It shows it is listed by, and it is signed by both [185] Mr. Short and Mr. Wolfe, as being listed, computed, and checked by them.

Q. Who has approved it, if anyone?

A. The County Committee approvals show the name of Elsberry, Beggs, and I am unable to read this last one.

It looks like Hamilton, but I am not sure.

Q. And the State Office people have also?

A. Yes, sir.

Q. Unless this particular exhibit is completely wrong, quite a few people participated in getting the allotment on 595 going for 1954, isn't that right?

A. Those signatures are usual on all Listing Sheets.

Q. In reference to the Farm 595, did you have occasion to search the records down there in the office for a file folder with an old number, but the same farm on it?

A. With an old number?

Q. Let me rephrase that question. Weren't you

(Testimony of Doyle S. Kennedy.)

given information that Farm 595 had existed before 1954 under another number?

A. Not that I recall. You may be referring to the fact that Mr. Short's explanation to me was that because of an error in legal description, 595 first had come into existence on this listing sheet.

595 is the northwest quarter of Section 3, and erroneously they had shown this as a farm, when they intended [186] and corrected 594, which I believe is the southwest quarter. That's Mr. Short's explanation to me as to why there was a 595 in the first place.

Q. And you have no reason to question that at this time, have you? A. No.

Q. You stated that in one of your conversations with Mr. Short that he stated, correct me if I am wrong, that Mr. Neely had destroyed his cotton, that is, the overplanted cotton?

Did you make that statement earlier? I assume that would be for the years 1955 and 1956.

A. He stated that Mr. Neely had destroyed his cotton, is that your question?

Q. Yes.

A. I would have to know which year.

Q. I think you misunderstood my question here, so I will ask this one. A. All right.

Q. As to the overplant in 1955, did Mr. Short here tell you that he had not plowed up any cotton, for Neely?

A. I believe I testified this morning that Mr. Short said at the time he put the "destroyed" fig-

(Testimony of Doyle S. Kennedy.)

ures on there, the cotton had not been destroyed. If I am not mistaken, the date was August 18, 1955.

Q. Do you remember exactly when you had that conversation?

A. No, I am sorry I don't. It was either in February or March, I would judge. And I talked with Mr. Short quite a number of times.

Q. Was that on the tape, do you know?

A. I am quite certain it is, yes.

Q. Didn't you subsequently learn some cotton had been plowed up following that time?

A. Mr. Short indicated that he later had inspected the field, and his recollection was around 50 acres was destroyed.

I then questioned Mr. Short why he got just this \$10 fee when the fees were on a sliding basis. The more acreage that was destroyed, the more was charged to go out and measure it. Mr. Short testified along with the 50 acres he thought were destroyed, he hadn't measured it, he had driven out there, I believe, but that was subsequent to the date Mr. Neely signed it, that was my understanding of it, and along that same line Mr. Neely stated to me and Mr. Johnson that he had destroyed about 15 acres.

The overplanting was in excess of 100 acres, if I am not mistaken.

Q. I think I understand you. You stated on direct examination, I believe, that you had investigated the [188] activities of the ASC Office in Pinal County, that is correct, isn't it?

(Testimony of Doyle S. Kennedy.)

A. I stated that, yes, that our investigation was concerned with irregularities, or apparent irregularities in the Pinal County Office, yes, sir.

Q. And you presumably investigated all of the various programs that were handled there, for irregularities?

A. Well, I personally may not have. There were four of us down here at one time, four special agents working on various phases of it.

Q. Does that mean you did or didn't?

A. Well, I would have to know which program you mean.

Q. What did you personally investigate?

A. Well, I personally investigated anything the three growers, where I was on the investigation of the three growers, Mr. Neely being one, who had paid Joe for securing additional cotton acreage allotments.

Also, I checked on the matter of the Country Club, who had, as you may recall, auctioned off their allotment.

Q. Let me interrupt you. Then you did not actually investigate the office. You went down, and you had certain specific cases you were going to investigate, and that is all you investigated?

A. No, we investigated—we went into the office with the allegations that irregularities had occurred. [189] We made a cursory examination on the various programs, and where it appeared there might be irregularities, we went further, and these cases developed out of that.

(Testimony of Doyle S. Kennedy.)

Q. Once again, you weren't looking blindly, were you?

A. No. We were not investigating every program for every farmer handled by the County Office for the last three years.

Q. Wouldn't you say, in fact, that of the various crops and farmers programs, more than 90 percent were never even looked at by you, or any of your people?

A. If you mean that the farms we didn't look at——

Q. I mean of the transactions that occurred, that the vast majority was untouched by United States investigation?

A. For a thorough investigation, yes, sir.

Q. You don't know personally, as a matter of fact, whether the rest of them were proper or improper, do you?

A. The only thing I could testify to that personally knowing is with respect to the ones that I made a complete investigation on, or was a member of the team that made the investigation.

Q. But by and large, your investigation did show that the office was actually a very well run office, didn't it?

A. For the volume that was handled by the office, I would say that it was in pretty fair shape; yes, sir.

Q. You live in San Francisco, don't you? [190]

A. In that area, yes, sir.

(Testimony of Doyle S. Kennedy.)

Q. How long have you been a Compliance Investigator?

A. I have been with the Department of Agriculture about five years in this capacity.

Q. Prior to that, what was your field?

A. I was with the United States Department of Labor in an investigatory capacity for about 15 years.

Q. Do you have F.B.I. training, or something like that?

A. No, sir.

Q. How often have you investigated agricultural problems on a county level?

A. Oh, I would say during the five years I have been with the department, you must understand that there were many other problems than cotton in various areas. We cover nine states. I would say 50 percent of my assignments have necessitated my checking in with the various county offices for some information or check of their records.

Q. How often has this 50 percent concerned cotton?

A. Well, this is my first experience with cotton in this manner here.

Q. In other words, prior to your participation in this investigation, you knew nothing more than an average employee would know about allotments and rules?

A. That is correct.

Q. To what extent have you familiarized yourself with [191] the rules as provided by the Secretary of Agriculture, as far as cotton program is concerned?

(Testimony of Doyle S. Kennedy.)

Mr. Holohan: At this time we would like to interpose an objection. We don't see the materiality of this.

The Court: The Court has to take judicial notice of those regulations.

We will suspend at this point until tomorrow morning at ten o'clock.

Keep in mind the Court's admonition.

(Thereupon an adjournment was taken to the following day, Friday, September 12, 1958, at the hour of ten o'clock a.m.) [192]

Friday, September 12, 1958

Ten O'Clock A.M.

The Court: You may continue, gentlemen.

DOYLE S. KENNEDY

resumed the stand and testified further as follows:

Cross Examination—(Continued)

Q. (By Mr. Stanfield): Mr. Kennedy, you stated I believe earlier that you had conversation with Mr. Short in connection with his job [193] there as office manager on numerous occasions, did you not?

A. Yes, sir.

Q. And part of which you tape recorded, and a part of which you did not? A. Yes, sir.

Q. During these various conversations, you had occasion to ask Mr. Short to point out various entries in a number of the records there at the office, did you not? A. Yes.

(Testimony of Doyle S. Kennedy.)

Q. As a matter of fact, you had him explain many of the entries, did you not? A. Yes.

Q. I don't remember whether it was the occasion of your visit to my office or not, but on one of the occasions you told Mr. Short to produce his bank statements and checks, did you not?

A. Yes, sir.

Q. And he did give you those items, didn't he?

A. He gave me most of them. Some he explained were withdrawn from his regular statements for income tax purposes for the return that he had made up.

Q. Did you subsequently get those?

A. Some, not all.

Q. And you also received a letter from him authorizing his bank to give you his records, their records in connection [195] with his banking activities there? A. Yes, sir, I did.

Q. That was the Valley National Bank in Casa Grande, Arizona, right? A. Yes.

Q. And, in fact, since the very beginning, the first conversation you had with Mr. Short, which was in November, I believe, of 1956, until the investigation was closed, if it is, he has cooperated with you in every respect as to statements, furnishing you with material, explanations, and what-not, isn't that correct? A. That is correct.

Mr. Stanfield: I beg the Court's indulgence while I locate an exhibit, Defendant's Exhibit J, the Statement.

Q. (By Mr. Stanfield): I hand you again De-

(Testimony of Doyle S. Kennedy.)

fendant's Exhibit J in evidence. That is the statement that Mr. Short signed back in January, 1957, isn't it? A. Yes, sir.

Q. Isn't it a fact that everything he has told you in connection with this statement that you have set down in writing, as well as the other statements, has been consistent since the very beginning, and has never changed?

A. Yes, sir. He has added details from time to time, but there has been no abrupt change in his statements.

Q. Now, calling your attention again briefly to the [195] statements you made earlier, that Mr. Short had admitted to his having forged the name of Doyle Dunkin on one of the Government's exhibits; do you remember the circumstances of the conversation in which this alleged admission was made? A. Yes, sir, I think I do.

Q. It occurred at the office, the ASC Office in Casa Grande? A. Yes, sir.

Q. Now, isn't it a fact that the occasion surrounding that particular signature or signatures involved something over an hour of discussion between you and Mr. Short, and possibly Mr. Johnson?

A. Yes, Special Agent Johnson was present also, but there were two conversations, Mr. Stanfield, some days apart.

Mr. Whitney: Who did you say was present also?

The Witness: Special Agent Johnson.

(Testimony of Doyle S. Kennedy.)

Q. (By Mr. Stanfield): Did they both occur at the same place?

A. They were both at the ASC Office, yes, sir, to the best of my recollection.

Q. Well, how far apart in time were they?

A. Oh, probably a week.

Q. Did Mr. Short make the same statement regarding the signatures at both times?

A. No, sir, the first time he was—he stated that [196] he didn't know whether it was his signature or not.

Q. And didn't he advance several theories as to the signature on both occasions?

A. Well, I am afraid I can't answer that. What do you mean by "theories"?

Q. Didn't he say that he couldn't remember having signed that name on those instruments?

A. He did the first time, yes, sir.

Q. And didn't he further state that he might have, but that he didn't remember? Didn't he say that?

A. My recollection is during the first conversation with him, he had first said he didn't remember signing it, but that he might have signed it.

Q. With respect to the ACP matter, I hand you Government's Exhibit 12-F, which I believe has been admitted, and ask you if you notice some initials in red ink down to the right side of that page?

A. Yes, sir, I do.

Q. Do you know whose initials those are, Mr. Kennedy?

(Testimony of Doyle S. Kennedy.)

A. I have been told that the initials are P.B.H., and the date is 9/25/54, I have been told, and I believe by Mr. Short, that these were Paul B. Hanna's, initials of a former employee of the office at that time.

Q. You were likewise informed that he had performed the calculations on this paper? [197]

A. I don't recall being informed that he performed those specific calculations. I believe his duties were in connection with clerical work.

Q. You have no reason to doubt that he did the work, have you? I am talking about Mr. Hanna?

A. I have no reason to doubt, no, sir.

Q. Have you discussed that matter with Mr. Hanna at any time?

A. I don't think that I have. I don't recall doing it at all.

Q. Is there any particular reason why? Was he unavailable?

A. I am under the impression he was unavailable. Also as to reason. It appeared to have no particular significance, those initials on there.

Q. Now, you knew from one way or another that Mr. Hanna was handling the ACP for the office during this particular time?

A. I was told by Mr. Short that Mr. Hanna handled the ACP clerical duties, yes, sir.

Q. And that Mr. Hanna would have been familiar with the forms in the various ACP files, wouldn't he, if he had been handling ACP?

A. It would seem logical, yes.

(Testimony of Doyle S. Kennedy.)

Q. And it likewise would have seemed likely that you [198] would have asked him about this particular file, wouldn't it?

A. No, sir, not from this standpoint. What you showed me there is simply the application for payment signed by Mr. Neely, form 245. Our questions were in connection with the signature of Doyle Dunkin.

Q. If Mr. Hanna were in charge of that program for that year, he would have had this file in his custody during this period of time, wouldn't he?

A. I was not informed he was in charge of the program. Mr. Short was in charge of the operations of the office, and he informed me Mr. Hanna was one of his clerical employees whose chief duty was the processing of the various ACP applications.

Q. You were aware of the various programs within the scope of the ASC office in Pinal County, as well as in other counties, that a particular program would be assigned to a particular employee, as far as the paper work is concerned, although the final responsibility might belong to the office manager, and in turn the committee, is that correct?

A. I was aware the various clerical employees were assigned certain duties. I wasn't aware anyone was assigned a duty to do one specific thing.

I don't think they had enough staff for that.

Q. You discussed the various and sundry matters in [199] connection with the office with other employees of the office besides Mr. Short, did you not?

(Testimony of Doyle S. Kennedy.)

A. The other current employees there, yes, sir.

Q. Let me ask you this. Did you have these signatures examined for comparison with the signatures or writing of other persons, by an expert, on that file?

A. Are you referring to the Doyle H. Dunkin signature?

Q. I am.

A. Yes, sir. We sent that to our laboratory in Washington with samples of Mr. Short's writing.

Q. You have not had this expert here to testify on this particular matter. Do you plan to?

A. That is entirely up to the United States Attorney, Mr. Stanfield.

Q. In this connection, as far as the handwriting is concerned, you would have obtained samples of Mr. Short's handwriting, would you not?

A. Yes, sir.

Q. Did you obtain samples before or after he suffered the stroke?

A. My recollection is that we obtained current samples at the time we discussed it. Now, I am not sure about that, but I think that is correct.

Q. That would have been in 1957, at the earliest?

A. Yes, sir. [200]

Q. As far as the written statement of Mr. Short that I have just handed you a few moments ago, you have had occasion during the course of the investigation of this case, and others, to investigate each and every point outlined therein, have you not?

(Testimony of Doyle S. Kennedy.)

A. I think that each and every point outlined in this statement has been investigated, but I won't say that I investigated all of them myself.

Q. You know that they were investigated?

A. Yes, sir.

Q. And some in connection with this case, some in connection with cases that have already been tried, some in connection with cases that have not yet been tried, is that right? A. Yes, sir.

Q. From what you know personally, as far as your investigation is concerned, have any of the statements or comments, or other matters contained in this statement on the part of Mr. Short disagreed with your investigation?

Mr. Holohan: I object to this. It is getting into gross hearsay.

Mr. Stanfield: I will withdraw the question.

The Court: He has withdrawn it.

Q. (By Mr. Stanfield): With reference to Mr. Short's statement, and the contents thereof, have you found any of [201] the information therein contained to be untrue?

A. I have found some conflicts, but I won't say that it is untrue.

Q. Now, at the risk of asking a question I might have asked in part before; during the various conversations that you had with Mr. Short on this statement, and so forth, you have had occasion to observe and notice his physical condition, haven't you? A. Yes, sir.

Q. Isn't it a fact that during the course of all

(Testimony of Doyle S. Kennedy.)

this conversation that you had with him, that he has had difficulty with his memory?

A. He has told me that he has had difficulties with his memory. I can't testify as to whether it is a fact or not.

Q. Hasn't he repeatedly referred to names and said, "I know who I mean, but I simply can't tell you the name"?

A. I have noticed that he has had difficulty in, especially in my earlier contacts with him, in pronouncing certain words, and he has at times had, or said, "That isn't exactly what I mean, but that is the name I mean."

Q. He has shown you a willingness to tell you a name, but he cannot think of a name?

A. Yes.

Q. Is that what you are saying?

A. He has appeared to show a willingness to tell a name, [202] but unable to pronounce it exactly correctly, in my earlier contacts with him.

Q. I only wanted to know what you observed.

Now, with reference to the Form 578 for Mr. Neely's farm, for the year 1955, you previously testified that Mr. Short told you, or may have told you, I think he said, that this is kind of involved, but, anyway, that Mr. Short had told you that Mr. Neely might have plowed up some cotton. Wasn't it something like that? The one in which he showed an overplant?

A. I am afraid if you can state a little more specifically, I will try to answer the question.

(Testimony of Doyle S. Kennedy.)

Mr. Whitney: If the Court please, I let this go on for some little time, but outside of this statement that the Government agreed that I could admit in evidence, I object to any testimony here as far as the Defendant Neely is concerned, subsequent to the 28th day of December, 1956, relative to the indictment, on the grounds that it is not binding on Neely, and was made after the last date mentioned in Count XII, which charges a conspiracy as far as Neely is concerned.

The Court: All right, the record will show your objection.

Q. (By Mr. Stanfield): Mr. Kennedy, do you recall the first time you met Mr. Short? [203]

A. Yes, sir.

Q. When and where was that?

A. The first time I ever met Mr. Short was, as I recall, in Los Angeles, in the office of John Griffin, our General Counsel there, and that was in the spring, I believe, of 1956, and I merely was introduced to him. He was up in Los Angeles working with Mr. Griffin on some other matter.

Q. You mean in connection with Pinal County and the cotton allotments?

A. I don't know whether it was cotton allotment, or not. It was some official Government business.

Q. Have you any recollection of his physical condition at the time of your first meeting, as you observed him?

(Testimony of Doyle S. Kennedy.)

A. Vaguely only. I just met him, and that was all.

Q. You could compare his condition at that time with what it was the first time you once again met him in November of 1958, could you not?

A. In a very general way only, Mr. Stanfield.

Q. Would you make such a comparison.

A. When I came down to Pinal County in November, 1956, Mr. Short appeared to be physically, and at least mentally, somewhat less alert, and he told me he had just suffered a stroke just two months prior to my seeing him in Pinal County in November, 1956.

Q. During the taking of Mr. Short's statement, and the [204] conversations you had with him with reference to the ASC, upon your inquiry, or otherwise, he pointed out to you certain other irregularities in the Pinal County allotment situation, didn't he, aside from the one on trial here today?

A. Did you say statements, plural, or are you referring to this first written statement?

Q. All. Any and all.

A. During my contacts with him, particularly at the time you were present, Mr. Stanfield, when this written statement was taken, or, rather, when the tape recording from which this written statement subsequently was made, he did point out irregularities which had not yet come to our attention.

Q. And he did mention a situation at the Casa Grande Country Club, did he not? A. Yes.

(Testimony of Doyle S. Kennedy.)

Q. And he did mention the Casa Grande Union High School, did he not? A. Yes, he did.

Q. And he did mention the PZ Ranch, did he not? A. I am not sure on that.

Q. Have you ever heard of the PZ Ranch in this connection? A. PZ?

Q. Yes.

A. The name doesn't seem familiar to me.

Q. How about the name Fred Ash, does that ring a bell? [205] A. Yes, sir.

Q. Did he mention the Pima Indian Reservation in this connection? A. Yes, sir.

Q. Did he mention the name Frank Russell in this connection? A. Yes.

Q. Did you discuss these cases with the United States Attorney?

A. I have acquainted the United States Attorney, to the best of my ability, with everything that I learned from Mr. Short, as from other avenues.

Q. Mr. Kennedy, are you familiar with the gross cotton allotment given or provided to the County of Pinal during the years 1954, 1955, and 1956, in general terms?

A. Did you say gross?

Q. Yes, total allotment allotted to the county.

A. I did have the figures. I don't call them to mind now. I know they were quite high.

Q. What do you mean by "quite high"?

A. Well, in comparison with the rest of the state, I believe Pinal County is the leading, or next

(Testimony of Doyle S. Kennedy.)

to the leading county in the matter of total allotments.

Q. You are not suggesting that there is anything wrong? A. No. [206]

Q. Just that they had a high allotment?

A. That is right.

Q. You have had occasion to check the records to find out whether or not Pinal County as a whole was overplanted during those years, haven't you?

A. I have checked some records showing the total planting in the county, yes, sir.

Q. You know that Pinal County at no time during the years '54, '55, and '56 was planted beyond its legally allotted cotton acreage?

A. No, sir, I don't know that. I know some of the reports may have shown that, but the results of our investigation showed there was overplanting not only in the instant cases, but in other cases.

Q. Are you talking about individual farms, or the county as the entire unit?

A. Well, the individual farms make up the county total.

Q. Let me ask a hypothetical question.

A. Yes, sir.

Q. If Pinal County in 1954 were allotted 150,000 acres of cotton, and planted and harvested 140,000 acres of cotton, regardless of what the individual farmers did, isn't the county overplanted, or not?

A. I am not in a position to answer the question

(Testimony of Doyle S. Kennedy.)

at all, because I am not sure of the criterion you would use. [207]

To me, if any of the farms are overplanted, then it would appear that since they are a part of the county, the county would be overplanted to that degree.

Q. In this hypothetical case, is the county within compliance, or does the same answer apply to that?

A. I don't see how the county can be in compliance if the farmers, or any of them in them are not.

Q. Does that mean any farmer in the county——

Mr. Holohan: I object to this line of questioning. Wholly immaterial.

The Court: Yes, I agree.

Q. (By Mr. Stanfield): Once again, in connection with the ACP program of practices within the county of Pinal, I believe you stated earlier that you have checked on a very few of the files on ACP and Pinal County for the year 1954, is that correct?

A. I don't remember making that statement.

Q. Would you state how many of the files you did examine in that connection for that year?

A. Mr. Stanfield, Special Agent Johnson more or less handled the detail of the ACP investigation, so I can only answer in general terms with respect to most of it.

Q. Do you think you know enough about the investigation of the ACP in connection with this

(Testimony of Doyle S. Kennedy.)

case that I can reasonably expect you to answer questions on it? [208]

A. If they are on details, I am afraid I don't.

Q. One question: Have you ever heard of a yellow-backed pamphlet called The ACP Program for Pinal County, in the year 1954?

A. I think that was a pamphlet issued by the County Committee explaining in layman's language the purposes of the ACP program, and I did see one in the County Office during the course of the investigation.

Q. Now, you made the statement, I believe, yesterday, that your investigation showed that Pinal County was the only county using what is known as Release and Reapportionment in the year 1954, isn't that right?

A. No, sir, I don't believe I made that definite statement. I said I understood that Pinal County—I didn't say our investigation showed it, because we investigated not all the counties in Arizona. I understood Pinal County was the only one that had used that program in 1954, and then I understood the State Office had prohibited them from using it subsequently, in 1955 and 1956.

Q. Subsequently to 1954, and could not use it in 1955 and 1956?

A. That was my understanding, yes, sir.

Q. Now, is the implication from that that this particular device was illegal in 1954?

A. The implication to me was that it was being

(Testimony of Doyle S. Kennedy.)

[209] misused in Pinal County in the manner in which they used it.

Q. But it was a legal device?

A. I think it was in the regulations.

Q. Do you know if it is still in the regulations?

A. I don't know, no, sir.

Q. Do you think you understand Release and Reapportionment sufficiently well to explain it?

A. I think the regulations provided, and this is the kind of explanation I can give you, that during 1954 a farmer who had a cotton allotment, and through some reason not under his control, lack of water, or something like that, was unable to plant the crop, was permitted to release that acreage back to the county, and still receive credit historically, upon which his future allotments would be based for that particular year.

But my understanding is it should have been released back to the county.

Pinal County, on the other hand, permitted the person releasing the allotment to designate the farmer to whom it was to go, and usually there was some arrangement where the farmer who got it paid the fellow who released it something, usually cash.

Q. This is based upon what you have heard, rather than what you know?

A. Well, you asked me if that was my understanding, and it is, sir. [210]

Q. Isn't it a fact that the individual farmer

(Testimony of Doyle S. Kennedy.)

could not designate to whom his cotton would go in such a case?

A. My understanding was that it should be released back unencumbered to the reserve to be apportioned, or reapportioned again, rather than as was done in Pinal County, having the farmer say, "I want this to go to my friend over here, Joe Smith," and have it run through that way.

Q. Nevertheless, for the years 1954, '55 and '56, this process was perfectly legal, and was on the books?

A. I am referring only to 1954. In 1955 and '56, I am not competent to state one way or the other, because I don't know.

Q. You don't know whether the law was changed or not?

A. Or the regulations, no, sir, I don't.

Q. Once again handing you Government's Exhibit 1 in evidence, which is the Listing Sheets for 1954, the page I have turned to contains the farm and listing for Farm 595, doesn't it?

A. Yes, sir.

Q. It also states that the name of the operator is Julian Woodruff, and the name of the owner is Kemper Marley?

A. Yes, sir.

Q. I will take that back. Now, on farm 595, these two persons were listed in the Listing Sheet as the owner and [211] operator for 1954, that is correct?

A. That's what it shows on the Listing Sheet, yes, sir.

(Testimony of Doyle S. Kennedy.)

Q. Did you have occasion to discuss this matter of this farm with either of these people during the investigation? A. No, sir.

Q. You don't know whether Julian Woodruff or Kemper Marley got an allotment notice, or anything else, for the year 1954, do you?

A. No, sir.

Mr. Stanfield: That is all.

Mr. Whitney: I would like to ask a couple of questions.

Recross Examination

Q. (By Mr. Whitney): Mr. Kennedy, referring to the cotton allotment notices sent out for the year 1954 to Mr. Neely, of which you testified the first time there was one announced by an Act of Congress, it was increased, and then finally arrived by adding 81 acres to 400.8, you remember that?

A. This was 1954?

Q. 1954. A. Yes, sir, I remember that.

Q. How many acres did the record show Mr. Neely actually planted that year? [212]

A. I would have to see it, to see the Form 578, which shows the measured acreage, Mr. Whitney.

Q. Referring to Government's Exhibit 11-A for identification, Form 578, I think.

A. Yes, this is a 578 for Short Staple Cotton for 1954, which shows a total planting of 388.9 acres.

Q. Which was under the 400.8 acres, assuming that that first lease was correct?

(Testimony of Doyle S. Kennedy.)

A. Well, I can't testify as to the first lease.

Q. I understand, assuming that it was, then he would be within his planting? In other words, he had planted less than the allotment, plus the 81 acres?

A. Assuming the lease was valid.

Q. That is right.

A. And all the requirements had been met.

Q. That is right.

A. Then his planting there is less than is shown on the Listing Sheet.

Q. Thank you.

A. For the final listing of that year.

Q. Now, Mr. Kennedy, from your examination you know that cotton allotments were bartered and sold all over Pinal County?

A. No, sir.

Q. During 1954, '55, and '56? [213]

A. No, sir, I can't make that statement at all.

Q. You didn't know that at all?

A. No.

Q. Did you make any investigation to determine that?

A. Yes, sir.

Q. All right. You found that there was some sales of allotments?

A. Well, I found no one who would admit for us that an allotment had been sold or bought.

I did find, or we all found, particularly in 1955 and 1956, that it was permissible under the regulations to combine, reconstitute two farms into one, and that there had been some leases on that, and that the County Committee had approved the reconstitution.

(Testimony of Doyle S. Kennedy.)

Q. That was so also in Maricopa County and Pima, and probably Yuma, all Arizona cotton growing counties?

A. I couldn't answer that at all, because I don't know.

Mr. Whitney: That is all.

Redirect Examination

Q. (By Mr. Hays): Mr. Kennedy, I will hand you Defendant's Exhibit I for identification. Did Mr. Neely show you that when he supposedly gave you, you and Mr. Johnson, all the pertinent papers?

A. This is a copy of what is headed "Sublease", and this is the one I believe we discussed yesterday, or was presented yesterday purporting to show the sublease of the property back to W. R. Burns.

No, sir, he did not.

Q. Were there any signatures on that lease?

A. There are none.

Q. You stated that release and reapportionment procedure was used in 1954, is that correct?

A. In Pinal County, yes, sir.

Q. And in response to Mr. Whitney's question, you mentioned reconstitution? A. Yes, sir.

Q. That was used in what years?

A. That I think is permissible, or has been permissible in any year.

Q. Was it used in 1955 and 1956 in the Pinal County Office? A. Yes, sir.

Q. What is the reconstitution procedure?

(Testimony of Doyle S. Kennedy.)

A. My understanding of it is that where, if I may give you an example, if I own a farm, and I want to increase my farming operations, and I find someone who will lease his farm to me, and I in addition want to plant the cotton allotment that goes with both farms on one or the other [215] parcels of land, I can go to the County Committee after executing a valid lease with the person who is letting him have his property, and if they approve——

Q. Who is “they”?

A. The County Committee, it is within their discretion. They have certain criteria to go by, both farms, the combined farm then has to be operated by one farmer, one operator under a common rotation system, and my understanding is they should be fairly close together, adjacent, or within the neighborhood.

If the County Committee in its discretion says all right, you may consider that one farm, then I may use the allotment for both of these former parcels of land, and plant it wherever I will on this so-called reconstituted farm.

Q. With reference to a question asked you by Mr. Stanfield, was Mr. Short, in your second conversation with him regarding the Doyle Dunkin signature, faced with the results of the handwriting analysis you said had been made on this signature?

A. Yes, sir, he was.

Q. Did he then indicate whether or not he had

(Testimony of Doyle S. Kennedy.)

signed the name "Doyle Dunkin" on those documents?

A. Yes, sir.

Q. He did indicate it? [216]

A. Yes, sir, he said, "That is my signature. I don't know why I did it."

Q. I will hand you Government's Exhibits 11-A and 11-D for identification, and ask you to examine them.

Did you discuss those documents with Mr. Neely in your conversation with him?

A. This is with Mr. Neely?

Q. Neely, now.

A. Yes, sir. This 11-A is the 1954 Short Staple measurements, and 11-D is the 1956 acreage measurements.

Mr. Hays: We will offer Government's Exhibit 11-A and Government's Exhibit 11-D in evidence.

Mr. Whitney: We have no objection to this.

Mr. Stanfield: No objection.

The Court: They may be received.

The Clerk: Government's Exhibits 11-A and 11-D in evidence.

(Said Forms 578 were received in evidence and marked as Government's Exhibits 11-A and 11-D, respectively.)

Mr. Hays: That is all the questions.

Recross Examination

Q. (By Mr. Whitney): Mr. Kennedy, talking about the farm combination in Pinal County, [217]

(Testimony of Doyle S. Kennedy.)

weren't all these practices approved by the State Committee here in Phoenix?

A. For what years, sir?

Q. 1954.

A. The State Committee I believe issued instructions as to what should be done. Now whether or not they subsequently approved them, and I think they did, I don't know.

Q. They may have approved them, as far as you know, from your investigation?

A. I know neither way, sir.

Q. How about 1955?

A. The same would—the 1955, there was no——

Q. Pardon?

A. We are speaking of reconstitutions now?

Q. I mean about all these actions of the Pinal County Committee, they were approved by the State Committee in 1955?

A. I think the State Committee has over-all charge of all the county committees. To what extent they go to approving specific actions, I couldn't say.

Q. That would also go for 1956?

A. Yes, sir.

Mr. Whitney: That is all.

Mr. Stanfield: No further questions.

Mr. Hays: That is all, Mr. Kennedy.

(Witness excused.) [218]

Mr. Holohan: Mr. Johnson, please.

LLOYD N. JOHNSON

called as a witness for the Government, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Holohan): State your name, please.

A. Lloyd N. Johnson.

Q. By whom are you employed?

A. The United States Department of Agriculture, Compliance and Investigation Division.

Q. How long have you been so employed?

A. About 16 years.

Q. And where do you generally reside?

A. At San Mateo, California.

Q. Did you undertake an investigation in the matter at issue here? A. Yes, sir.

Q. During the course of your investigation, did you come in contact with the Defendant Neely?

A. I did, sir.

Q. Did you interview him from time to time?

A. Yes, sir. [219]

Q. Do you have any idea about how many occasions?

A. Well, I would say a half a dozen occasions during the period the latter part of January, until about the latter part of March.

Q. And where did these interviews generally take place?

A. They generally took place at the Pinal County ASC Office. However, some of them were at his home in Chandler.

(Testimony of Lloyd N. Johnson.)

Q. Do you recall approximately when the first interview was?

A. I think the first interview was on January 22, or thereabouts. On or about that date.

Q. And where did it take place?

A. The first time I saw Mr. Neely was at the Casa Grande—at the Pinal County ASC Office in a brief conversation there.

And on that same day, or the next day, I can't recall definitely, we interviewed Mr. Neely at his home in Chandler.

Q. On this second interview at the home in Chandler, who was present?

A. Special Agent Kennedy, and Mr. Neely, and myself.

Q. And during the course of that interview were any documents turned over to you by the Defendant Neely?

A. Yes, Mr. Neely from his personal records there at his home gave us his copy of the Burns lease, his producer's copy of the Notices of Cotton Allotments for 1954, 1955, 1956, [220] and two Marketing Cards, I think the 1954 Short Staple card, and the 1956 Short Staple Marketing Card.

Mr. Holohan: May this be marked as Government's Exhibit 16-A for identification, and this document as 16-B for identification.

The Clerk: Government's Exhibits 16-A and 16-B for identification.

(Testimony of Lloyd N. Johnson.)

(Said Marketing Cards were marked as Government's Exhibits 16-A and 16-B for identification.)

Q. (By Mr. Holohan): You have made reference to the Burns lease. I will hand you what has been marked Government's Exhibit 15 in evidence, and ask you whether that is the document that was turned over to you?

A. Yes, this is the lease which Mr. Neely made available on that occasion.

Q. I will hand you what has been marked Defendant's Exhibit I for identification. Was that ever shown to you?

A. I have never seen this.

Q. I will hand you a series of documents here beginning with 17-A for identification.

A. This is a notice of Farm Acreage Allotment for 1954, Short Staple Cotton, dated December 11, 1953.

Q. From whom did you receive that?

A. Mr. Neely.

Q. I hand you Government's Exhibit 17-B for identification. [221]

A. A similar notice dated February 16, 1954, for Short Staple Allotment.

Q. From whom did you receive that?

A. From Mr. Neely.

Q. On this same occasion? A. Yes.

Q. Government's Exhibit 18 for identification.

A. Another revised Notice of Allotment. No, pardon me, this is 1955. This is a 1955 acreage

(Testimony of Lloyd N. Johnson.)

allotment for Upland Cotton dated November 12, 1954, which I also received from Mr. Neely on that occasion.

Q. And I will hand you Government's Exhibit 18-B for identification.

A. This is a Notice of 1955 Allotment on Extra Long Staple Cotton, dated March 3, 1955, which also was handed to me by Mr. Neely on the date of our visit at his home.

Q. And lastly, Government's Exhibit 19 for identification.

A. A 1956 Notice of Allotment of Upland Cotton, dated December 1, 1955, which Mr. Neely gave me along with these other allotments, at his home.

Q. All right. The revised notice that you mentioned, is that Exhibit 17-C?

A. Yes, that is a Revised Notice of 1954 Upland Cotton Allotment, dated March 19, 1954.

Mr. Holohan: At this time the Government [222] offers Government's Exhibits 17-A for identification, 17-B for identification, 18-A for identification, 18-B for identification, and 19 for identification, in evidence.

The Court: We will have our morning recess at this time.

(Recess.)

The Court: You may continue.

Mr. Holohan: It is my understanding there is no objection to the documents we asked to be offered in evidence.

Mr. Whitney: No objection.

(Testimony of Lloyd N. Johnson.)

The Court: They may be received.

The Clerk: Government's Exhibits 17-A, 17-B, 18-A, 18-B, and 19 in evidence.

(Said Notices of Allotment were received in evidence as Government's Exhibits 17-A, 17-B, 18-A, 18-B and 19.)

Mr. Holohan: I don't recall whether we offered 20 and 21 in evidence or not yesterday. They aren't marked, so we will offer them in evidence at this time.

Mr. Whitney: What are they?

Mr. Holohan: They are the deposit slips and ledger sheet card.

Mr. Whitney: I see no objection.

Mr. Stanfield: No objection.

The Court: They may be received.

The Clerk: Government's Exhibits 20 and 21 in evidence. [223]

(Said Ledger Sheet was marked as Government's Exhibit 20 in evidence, and said Deposit Slip was marked as Government's Exhibit 21 in evidence.)

Mr. Holohan: May this exhibit be marked as Government's Exhibit 16-C for identification. It is also Defendant's Exhibit E, is it not?

Mr. Whitney: Yes.

The Clerk: Defendant's Exhibit E and Government's Exhibit 16-C for identification.

(Said Marketing Card was marked as Defendant's Exhibit E and Government's Exhibit 16-C for identification.)

(Testimony of Lloyd N. Johnson.)

Q. (By Mr. Hays): All right, in the course of this interview at the house, that was the first interview that you had at the house? A. Yes.

Q. Did he give you any marketing cards, he being the Defendant Neely?

A. Yes, Mr. Neely gave me his 1954 Short Staple, and his 1956 Short Staple Marketing Card.

Q. I will hand you what has been marked 16-A for identification, and ask you whether that is one of the cards?

A. Yes, this is the 1954 Short Staple card.

Q. All right. And I will hand you what has been marked 16-B for identification, and ask you what that is. [224]

A. This is his 1955 Short Staple Marketing Card.

Q. You didn't get that from him?

A. No, I didn't. I picked this up at the Chandler Gin Company.

Q. Which handles his account? A. Yes.

Q. I will hand you what has been marked 16-C for identification, and Defendant's Exhibit E.

A. That is the 1956 Short Staple Marketing Card which Mr. Neely gave me on that occasion.

Q. All right.

Mr. Holohan: At this time, the Government offers in evidence Government's Exhibit 16-A, 16-B, and 16-C, all for identification. And at the same time we will also offer Government's Exhibits 4, 5, and 6, Marketing Card Registers for the respective years.

(Testimony of Lloyd N. Johnson.)

Mr. Whitney: Which one of those was identified as being picked up at the Chandler Gin?

Mr. Holohan: I will have to ask the witness.

Q. (By Mr. Holohan): Which one of these did you pick up at the Chandler Gin Company?

A. This one, 1955.

Mr. Whitney: What is the number of it?

Mr. Holohan: 16-B.

Mr. Whitney: No objection. [225]

Mr. Stanfield: No objection.

The Clerk: Government's Exhibits 16-A, 16-B, and 16-C in evidence.

(Said Marketing Cards were received in evidence and marked as Government's Exhibits 16-A, 16-B, and 16-C.)

Mr. Whitney: As for 4, 5, and 6, I will let Mr. Stanfield look at these. I don't know anything about them. I might ask Mr. Holohan. I understood somebody testified they were kept in the ordinary course of business down there at the office?

Mr. Holohan: Right.

Mr. Whitney: As far as I am concerned, there is no objection.

Mr. Stanfield: No objection.

The Court: They may be received.

The Clerk: Government's Exhibits 4, 5, and 6 in evidence.

(Said Marketing Card Registers were received in evidence and marked as Government's Exhibits 4, 5, and 6.)

(Testimony of Lloyd N. Johnson.)

Mr. Holohan: May this be marked for identification.

The Clerk: Government's Exhibit 24 for identification.

(Said Statement of Rex L. Neely was marked as Government's Exhibit 24 for identification.)

Q. (By Mr. Holohan): Now, on this first interview at the [226] house, when these various documents were turned over to you, approximately what length of time was consumed in that interview?

A. Oh, I think we were at Mr. Neely's home for about an hour and a half, possibly two hours, or thereabouts.

Q. All right. Was a statement taken from the Defendant at that time?

A. Yes, we incorporated the gist of our conversation that evening in a written statement.

Q. Who wrote the statement?

A. I wrote the statement in my handwriting.

Q. I will hand you what has been marked Government's Exhibit 25 for identification, and ask you to examine that. Is that the statement which you wrote up?

A. Yes, sir.

Q. When was it actually written up there? Was it on the same date of the interview?

A. It was in the evening on January 22nd, the date of the statement, as I recall.

Q. Does the statement bear a signature?

A. Yes, sir. It is signed "Rex L. Neely," witnessed by Doyle S. Kennedy and Lloyd N. Johnson.

(Testimony of Lloyd N. Johnson.)

Q. The Rex L. Neely, was the Defendant here in this case? A. Yes, sir. [227]

Q. Did he sign that in your presence?

A. Yes, sir.

Q. Did he willingly give you the statement which he incorporated? A. Yes, sir.

Q. Did you give him the statement to read?

A. Yes, he read over the statement that evening.

Q. Were there any corrections or anything that he made in the statement?

A. I don't recall that there were. There may have been. I see one part deleted, and part of a sentence deleted here.

Q. And is it initialed, do you recall, or does the statement——

A. Yes, it bears Mr. Neely's initial.

Q. And he initialed that in your presence on this occasion? A. Yes, sir.

Q. And did the interview concern the events which are part of this case here?

A. Yes. Some of them that we knew of at that time, yes.

Q. Were there other interviews after this date in January when you interviewed him and took the statement? A. Yes.

Mr. Holohan: At this time the Government offers in evidence Government's Exhibit 25 [228] for identification as Government's Exhibit 25.

Mr. Whitney: May I ask a question on voir dire?

The Court: You may.

(Testimony of Lloyd N. Johnson.)

Q. (By Mr. Whitney): At the time that you made this investigation and took this statement, was that done on a tape recorder?

A. This was not tape recorded, no, sir.

Q. Several other statements were taken that were taped? A. That weren't taped?

Q. That were taped? A. Yes, sir.

Q. This is the only statement that was taken that was not taken on a tape recorder?

A. That is right, sir.

Q. And this statement is in your handwriting?

A. Yes, sir.

Q. You wrote it up and Mr. Neely signed it?

A. Yes, sir.

Q. After reading it. Now, you gave him the regular warning that this might be used as evidence against him?

A. I think that is right in the statement, Mr. Whitney, in the first paragraph.

Q. And was that done on the tape recording also?

A. I don't recall that those words were used in the tape recording. [229]

Mr. Whitney: No objection.

Mr. Stanfield: As to the Defendant Short, objection is made on the basis of relevancy.

The Court: It may be received.

The Clerk: Government's Exhibit 25 in evidence.

(Said Statement of Rex L. Neely was received in evidence and marked as Government's Exhibit 25.)

(Testimony of Lloyd N. Johnson.)

Q. (By Mr. Holohan): Now, in your various interviews with the Defendant Neely, did you discuss with him the securing of short staple allotment in 1954? A. I did.

Q. All right. In these various interviews, was Mr. Kennedy present at all of them?

A. Mr. Kennedy was not present at all of the interviews I had with Mr. Neely.

Q. Where were most of the interviews taken?

A. They were mostly taken at the Pinal County ASC Office, at which time Mr. Kennedy was present.

Q. And there were some taken at his home?

A. Yes.

Q. Was there more than one taken in the home?

A. Yes. I saw Mr. Neely in the latter part of March at his home when Mr. Kennedy was not with me.

Q. All right. Now, what did Mr. Neely say as to how he came to get the 400 acres of cotton allotment in 1954? [230]

Mr. Whitney: If the Court please, I object. If he remembers anything outside the statement, if he is going to do anything outside of that statement, then I insist they get the tape recorder here, and let's hear it all.

The Court: Have you heard it?

Mr. Whitney: Yes. I have spent five hours listening to it.

The Court: You tell me what you want repeated, so we can save time.

(Testimony of Lloyd N. Johnson.)

Mr. Whitney: I can't cross examine without the tape recording. I have heard the tape recording, and I know it takes five hours to play it.

The Court: If you have heard it, you tell the Court what you want. Go ahead.

Q. (By Mr. Holohan): Thank you. Proceed, then.

A. Is the question concerning——

Q. 1954.

A. 1954. Mr. Neely told me, substantially, that in the fall of 1953, I believe, he was desirous of obtaining some extra cotton allotment, and in that connection he asked a Mr. Mike Watson as to whether or not Mr. Watson knew where he could get some cotton acreage, and Mr. Watson referred him to Mr. Short at the Pinal County ASC Office, stating that he thought that Mr. Short might know of some.

That he thereafter contacted Mr. Short regarding [231] this, and that Mr. Short procured for him 81 acres of allotment pursuant to the arrangements under this so-called Burns lease.

Q. That is the document you have previously identified here? A. Yes.

Q. All right.

A. That Mr. Neely said that at that time he gave Mr. Short, issued Mr. Short his personal check in the amount of \$1620, \$20 per acre, in payment for this acreage.

Q. Did Mr. Neely ever state that he knew this W. R. Burns?

(Testimony of Lloyd N. Johnson.)

A. Mr. Neely stated that he didn't know this W. R. Burns.

Q. How was the transaction with the lease handled, so far as Mr. Neely's version of it?

A. Mr. Neely said that the transaction took place at the ASC Office. That Mr. Short produced this lease, which already had the signature W. R. Burns affixed thereto, and that in Mr. Short's presence, he, Mr. Neely, signed the lease, and it was witnessed at that time by Mr. Short.

Q. Was there a discussion concerning the 1955 crop of short staple cotton?

A. Yes. Mr. Neely said again, substantially, that he wanted to get some extra allotment in 1955, and that he asked Mr. Short if the allotment on the Burns farm would be available [232] again for that year, for the 1955 crop year.

Q. All right.

A. That Mr. Short told him he would find out, that he thought it would be, and that some few days subsequently thereto, Mr. Short informed him that he could have, I think seventy and one-half acres.

Q. Did Mr. Neely state that these conversations had taken place after he had received his allotment notice for the coming season?

A. I think he said that they took place about the time the 1955 allotment notices were issued. Whether it was afterward, I don't know. I thought it was.

Q. Did he describe a lease transaction in 1955?

(Testimony of Lloyd N. Johnson.)

A. No. He said he didn't get a lease in connection with the 1955 arrangement. He said that the matter of a lease was not mentioned, but that he expected there would be one forthcoming later on.

Q. Was he given a revised notice of allotment in 1955? A. No, sir.

Q. The only allotment notice that he had was the one that has been produced here which he gave you? A. That is right.

Q. What was the rate of compensation in 1955?

A. I believe it was the same as 1954, \$20 per acre. The check which he issued in 1955, to the best of my recollection, [233] was for \$1,410.00, which would be seventy and one-half acres.

Q. Besides short staple cotton, did the defendant state that he planted any other, the long staple type of cotton that year? A. In 1955?

Q. In 1955. A. Yes, he did.

Q. Was the defendant able to produce his 1955 Marketing Card?

A. No, he was not able to find it on the evening of our visit at his home, nor subsequently thereto.

Q. The Marketing Card Register does show he was issued one, however? A. Yes.

Q. Now, with regard to the year 1955, was there any discussion with the Defendant Neely as to the amount of acreage that he planted?

A. Yes, there was. Mr. Neely in going over his Form 578 for 1955, as I recall, questioned the measured figure there.

(Testimony of Lloyd N. Johnson.)

Q. What did he have to say about the signing of the 578, and the figures there?

A. He said that he went to the Pinal County Office and talked to Mr. Short. Upon that occasion, Mr. Short brought out his 578, and asked him if he had destroyed any cotton. He said that he had not at that time. [234]

He said he then signed the form, received his Marketing Card from Mr. Short, and went back out to his farm on that same day, and personally destroyed about 15 acres of cotton.

Q. That is one-five, fifteen? A. Yes.

Mr. Whitney: How many?

The Witness: About fifteen.

Q. (By Mr. Holohan): Now, at the time that the 578 was signed up, did the Defendant state what figures were on there?

A. He said to the best of his recollection that when he signed the 578, that he didn't recall seeing the figures, the measured figures in the various fields, and that definitely he did not see any figures representing destroyed acres.

Mr. Whitney: This is all 1955 we are talking about?

The Witness: This is all 1955 Short Staple, Mr. Whitney.

Q. (By Mr. Holohan): Was there any discussion by you with the Defendant as to the 1955 Long Staple? A. Yes, sir.

Q. All right, what was that?

A. He said that on that same occasion he re-

(Testimony of Lloyd N. Johnson.)

ceived his Long Staple Marketing Card from Mr. Short after signing his form 578 for Long Staple.

Q. All right. [235]

A. He said that he was overplanted in long staple, that he didn't destroy any long staple in 1955.

Q. Did he state whether he recalls whether the destroyed figures were already on the 578?

A. That would be the same as the short staple. He said that the destroyed, the figures representing destroyed cotton were not on the form when he signed it.

Q. He said they definitely were not on it?

A. Yes.

Q. These 578's that we have been talking about are this series, in 11-A through D, are they not?

A. Yes.

Q. On 11-C and 11-B, the destroyed acreage is placed in red, is it not?

A. That is right.

Q. At the time Mr. Neely claims that he did not see, or that those figures were not on, or he does not recall them being on?

A. To the best of my recollection, Mr. Neely at first said that he did not recall having seen the destroyed figures on the 578, and I think later he was quite definite in saying they were not on there.

Q. Now, was there any discussion about the short staple allotment in 1956? [236]

A. Yes. Again Mr. Neely recounted that he sought some extra short staple allotment from Mr.

(Testimony of Lloyd N. Johnson.)

Short for the 1956 crop year, that he went to the ASC Office about this, and inquired of Mr. Neely whether the Burns allotment would be available again for 1956, and that Mr. Neely subsequently made available 60 acres, or that Mr. Short subsequently made available 60 acres for 1956, that Mr. Neely issued his check to Mr. Short on that occasion under those arrangements for \$1750.

Q. These checks you have spoken about, were they ever identified by the Defendant Neely?

A. Yes, we discussed those checks with Mr. Neely.

Q. I will hand you what has been marked 14-A, 14-B, and 14-C, all in evidence.

A. Yes, these are the checks which we discussed with Mr. Neely.

Q. Covering the three years in question?

A. Yes.

Q. These, of course, were made available, or caused to be made available to you by the Defendant Neely? A. That is right.

Q. Now, in 1956, what was the rate that was agreed upon between the Defendants Short and Neely, according to the Defendant Neely?

A. Mr. Neely said that Mr. Short set the rate per acre, [237] and to the best of my recollection, it was \$25 for 1956.

Q. On the amount shown on the check for that year, does that jibe with the figure of \$25 per acre, and the number of acres allotted?

A. No, the amount of the check, on the basis

(Testimony of Lloyd N. Johnson.)

of \$25 an acre for the 60 acres, would be \$1500, I believe. Now, in that connection, Mr. Neely said he paid more for the 1956 acreage than he had previously, because he thought it was worth more, and in addition to that he said that he made the check for an extra \$250, because he understood Mrs. Short was going to the hospital, and he wanted to assist Mr. Short with these hospital expenses.

Q. Now, was there any discussion with the Defendant Neely as to his plant in 1956, the plant of short staple cotton in Pinal County?

A. Yes. We discussed his planted acreage, that is, his measured acreage as shown on the Form 578.

Q. I believe that is 11-D for identification. Or in evidence, excuse me.

A. Yes, 11-D in evidence. 1956 Report of Acreage, showing measured acreage of 477.7 acres.

Q. Was that discussed with the Defendant Neely? A. Yes.

Q. Did he make any comment as to the amount shown for 1956? [238]

A. Mr. Neely said that he wouldn't exactly—well, now, wait a minute. Mr. Neely said yes, that he would confirm this acreage as his 1956 acreage.

Q. In 1955 he thought they had over-measured him, but in 1956 he agreed that that was about right?

A. I think he would say substantially correct, yes.

Q. Now, was there any discussion about his destruction in 1956?

(Testimony of Lloyd N. Johnson.)

A. Yes. It was observed from the 578 that he hadn't destroyed any of his 1956 short staple, and in going over this with him, he acknowledged that he had not. And he gave various reasons for not having done so.

Q. What were his reasons?

A. Well, if I recall correctly, he said, first of all, that he had gone to the Pinal County ASC Office, and had gotten his marketing card, apparently assuming that was all he needed.

Q. All right.

A. He also said that he was over-extended on water in 1956, not having enough to go around, and that he had some burned spots in some of his fields, that if he destroyed any cotton, it would result in a short crop.

Q. All right.

A. He also said that he hadn't received an over-plant notice, and didn't know exactly how much to destroy. I think [239] as I recall, he further said that he had heard conversations in the county among farmers, and others, of general laxity in the ASC Office, and that farmers were not destroying cotton, and that he thought he might get by without destroying any for that year.

Q. Did he ever say that he got a lease for the Burns place in 1956?

A. No. There again he said that a lease was not mentioned in his conversation with Mr. Short, that, however, he expected that one might follow.

(Testimony of Lloyd N. Johnson.)

Q. Now, the Defendant also has operations in Maricopa County, doesn't he?

A. That is right.

Q. In the year 1956, he entered into a combination in Maricopa County, didn't he?

Mr. Whitney: I object to this. No charge in the indictment on that, that I know of.

The Court: What does that have to do in this case?

Mr. Holohan: Knowledge, your Honor.

The Court: Knowledge of what?

Mr. Holohan: Of the necessity for a combination to revise the allotment, and that your Marketing Card should show an additional allotment. The Marketing Cards for Pinal show the original allotment. He got none for the Burns farm in 1955 and 1956. [240]

The Court: All right, go ahead.

Mr. Stanfield: We object on the ground that there is no showing that the rules of Pinal County apply.

The Court: The regulations are the same. Go ahead.

The Witness: That was 1955?

Q. (By Mr. Holohan): In 1955, he operated a combination in Maricopa?

A. I understand that he did, yes, sir.

Q. Did he admit that he did?

A. I don't recall talking to Mr. Neely specifically concerning a specific combination. The Maricopa County records show such a combination.

(Testimony of Lloyd N. Johnson.)

Q. Now, was there any discussion with the Defendant as to ACP? A. Yes.

Q. What do we mean by ACP?

A. Agricultural Conservation Program.

Mr. Holohan: May this be marked in the 12 series. It would probably be "G" as an exhibit for identification.

The Clerk: Government's Exhibit 12-G for identification.

(Said document was marked as Government's Exhibit 12-G for identification.)

Q. (By Mr. Holohan): Now, at the time that you had the [241] conversation with the Defendant Neely regarding the ACP, did you have the benefit of the various documents to assist you in the discussion with him? A. Yes, sir.

Q. And did you go over the documents with him? A. Yes, sir.

Q. I will show you these things that I have available here as 12-A, B, D, E, and F, all in evidence.

Were those the documents that you went over with the Defendant?

A. Yes. We discussed them with Mr. Neely.

Q. Do you recall off-hand when that discussion took place?

A. This was in March. It possibly was the latter part of March.

Q. And where did it take place?

A. At the Pinal County ASC Office.

Q. And who was present with you there?

(Testimony of Lloyd N. Johnson.)

A. Special Agent Kennedy was there.

Q. I have located 12-C here. Was that also one of the documents that you went over?

A. That is one of the documents, yes, sir.

Q. All right. Did the Defendant say he had received payment for the practice represented by those papers in 1954?

A. Yes, he said that he had received payment for this particular practice.

Q. All right. Starting with 12-A in evidence, that document is which?

A. 12-A is the application, that is, Form 201. It is a request that the Federal Government share costs of needed conservation practices.

Q. Now, two practices are placed on that document, are they not?

A. Yes. This is under the 1954 Agricultural Conservation Program, and there is a request, that is, these practices are named Land Leveling, and Ditch Lining.

Q. All right. What did the Defendant have to say about the business of the two practices there?

A. To the best of my recollection, Mr. Neely said that in this year he had requested a land leveling practice.

Q. On the approximate date set forth in the document?

A. Yes.

Mr. Whitney: In what year? 1954?

A. (By the Witness): It is 1954. And that he had gone ahead pursuant to this request, and tentative approval, and had done some land leveling.

(Testimony of Lloyd N. Johnson.)

That, however, later on during the summer, when the soil conservation came out to his farm to check on the performance, they wouldn't, they declined to certify performance, because he wasn't right up to specifications. [243] That they—that he—no, that they said that he would have to bring his leveling up to grade.

I think he said that this was at the time when he needed to get a crop in, and that the delay in doing further work and waiting for additional inspection, and getting approval from Soil Conservation would delay him to a point where it would interfere with the planting of the crop on that particular field, and that he therefore went ahead and farmed this tract.

Q. He did not pursue that part of the practice any further? A. No.

Q. Now, did he fix any date as to when this inspection, the land leveling inspection, on the land leveling, had taken place?

A. Mr. Neely seemed not to be able to recall definitely the dates involved, but he finally said that it must have been after the land leveling was declined approval, of the land leveling, that the change was made.

Q. And did he place any approximate time as to when the land leveling had been denied?

A. I don't remember that he said any particular date. I think it was in the summer, July or August.

Q. He placed the time as of July or August of 1954?

(Testimony of Lloyd N. Johnson.)

A. To the best of my recollection. [244]

Q. All right. Now, was he asked about the entry showing that the change from land leveling, as shown on 12-A, that the change from land leveling to ditch lining had taken place on May 27th?

A. Yes, we discussed the date of that, the purported date of that change with him as being May 27.

Q. What did he save to say about that?

A. At first, as I say, he didn't know. He thought maybe that could be, but he later, when we went over and got into the circumstances, said that the change must have been made later on in the year, after the land leveling was denied.

Q. Now, the specific ditch in question for which he was paid, did you discuss that with him?

A. Yes.

Q. What did he have to say about that specific ditch?

A. Well, Mr. Neely said that he had a ditch installed in the spring of 1954, that it would have had to have been in early in the spring, at least in February or March, because he had used it to irrigate his spring crop that year.

Q. And the date of the application as shown by 12-A is in May? A. May 24, 1954.

Q. Now, counsel earlier in the trial asked about another practice. Did you discuss that with the Defendant?

A. Yes, we did. That was an earlier practice [245] completed in the fall, in December and early

(Testimony of Lloyd N. Johnson.)

January of—December, 1953, and early January, 1954.

Q. And what did it concern?

A. It covered a mile and a half of ditch lining on it.

Q. All right. Now, would you take this piece of chalk, and I will take those, and I will hand you what has been marked 12-G, and before you go to the board with regard to this 12-G for identification, did you make up that document?

A. Yes, I did. It is initialed and dated by me.

Q. When was it made up?

A. I have it dated March 22, 1957.

Q. And who was present while you were making it?

A. A Mr. Neely, a Mr. Kennedy, I believe was there on that occasion.

Q. Did you make use of the document in question during your interview?

A. Yes, sir.

Q. All right. Now, if I may ask you, you have the piece of chalk there. Would you draw on the blackboard there the set-up of the ditch lining practices for the two years.

A. In going over Mr. Neely's ditch lining, this is the information which he supplied, to the best of his recollection. (Witness draws on blackboard.)

I am sure these section lines were straighter than what I have done. [246]

The earlier practice was——

Mr. Whitney: The what practice?

The Witness: The earlier practice, the one be-

(Testimony of Lloyd N. Johnson.)

fore this one in the spring of 1954, was DF on the east section line, and BC between the southwest and southeast quarters.

Q. Would you put regular cross marks on those.

A. (Witness draws on blackboard.)

Q. Those were covered by applications prior to the year 1954? A. Yes, sir.

Q. However, when was the Defendant paid for those practices?

A. He was paid on April in April, 1954.

Q. When was the ditch "A" to "B", according to the Defendant's version, put in?

A. This was the one that was put in in the spring of 1954, February or March.

Q. Would you put some cross marks on that one? A. (Witness draws on blackboard.)

Q. That was in February or March of 1954, and that, according to the Defendant Neely's version, he had actually thought he was applying for ditch lining sometime after his land leveling had been turned down? A. That is right.

Q. Did he acknowledge that he had gotten payment for the [247] A to B ditch lining there in 1954?

A. This 1954 practice. Yes, I think he did say he had received payment for that.

The Court: We will suspend at this point until two o'clock.

Keep in mind the Court's admonition.

(The noon recess was taken.) [248]